

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0552-AIR-E TCEQ ID: RN100213594 CASE NO.: 34860

RESPONDENT NAME: Lee-Var, Inc. dba Palmer of Texas

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input 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>SITE WHERE VIOLATION(S) OCCURRED: Palmer of Texas Andrews Plant, 1701 North United States Highway 385, Andrews, Andrews County</p> <p>TYPE OF OPERATION: Fiberglass tank manufacturing plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 2, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732 TCEQ Enforcement Coordinator: Ms. Suzanne Walrath, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-2134; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Jim D. Lee, President, Lee-Var, Inc., 1701 North US Highway 385, Andrews, Texas 79714 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 12, 2009</p> <p>Date of NOV/NOE Relating to this Case: April 8, 2009 (NOE)</p> <p>Background Facts: This was a records review investigation.</p> <p>AIR</p> <p>1) Failure to comply with emission standards for Hazardous Air Pollutants ("HAPs"). Specifically, the Respondent exceeded the average emission limit range of 151.23 to 156.9 pounds ("lbs") per ton of styrene 7 times during the period from June 2008 through December 2008 by 114.4% to 124.7% [Agreed Order Docket No. 2007-1724-AIR-E, Ordering Provision Nos. 2.a. and 2.b., 30 TEX. ADMIN. CODE §§ 101.20(2) and 122.143(4), 40 CODE OF FEDERAL REGULATIONS ("CFR") § 63.5805(b), Federal Operating Permit ("FOP") No. O-02704, Special Terms & Conditions ("STC") 1D, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to timely submit two Subpart MMMM notification of compliance status reports. Specifically, the Respondent failed to submit the initial compliance status report, which was due no later than March 2, 2008, until February 9, 2009; and failed to submit the semi-annual compliance status report, which was due no later than July 31, 2008, until February 25, 2009 [30 TEX. ADMIN. CODE §§ 101.20(2) and 122.143(4), 40 CFR §§ 63.3910(c), 63.3920(a)(1)(ii), FOP No. O-02704, STC 1D, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3) Failure to comply with the 12-month HAP emission limit of 2.6 pounds organic HAPs per gallon ("lbs HAPs/gal") of</p>	<p>Total Assessed: \$43,750</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$21,875</p> <p>Total Paid to General Revenue: \$21,875</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: This case involves a violation of a prior Agreed Order. When the Respondent failed to comply with the prior Agreed Order, the Respondent demonstrated an indifference to legal duty.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a) On February 9, 2009, submitted the initial Subpart MMMM notification of compliance status report; and</p> <p>b) On February 25, 2009, submitted the first semi-annual Subpart MMMM notification of compliance status report.</p> <p>Ordering Provisions:</p> <p>1) The Respondent will be required to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A.)</p> <p>2) The Order will also require the Respondent to:</p> <p>a) Within 15 days after the effective date of this Agreed Order, submit an administratively complete air permit application;</p> <p>b) Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing;</p> <p>c) Within 120 days after the effective date of this Agreed Order, implement measures and/or install equipment that will ensure that the Plant can comply with HAP emission limits;</p> <p>d) Within 135 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 2.c.; and</p> <p>e) Within 240 days after the effective date of this Agreed Order, submit written certification that either authorization to construct and operate a source of air emissions has been obtained or that operation has ceased until such time that</p>

<p>coating solids. Specifically, the Respondent exceeded the allowable limit for styrene during the initial compliance period by 39% as the actual rate was 3.59 lbs HAPs/gal; and also during the subsequent compliance period by 38% to 67% as the actual range was 3.599 lbs HAPs/gal to 4.329 lbs HAPs/gal [30 TEX. ADMIN. CODE §§ 101.20(2) and 122.143(4), 40 CFR § 63.3890(b)(1), FOP No. O-02704, STC 1D and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>4) Failure to obtain air permit authorization for the surface coating and abrasive blasting operations [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.0518(a)].</p>		<p>appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance.</p>
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Additional ID No(s): AB0023R

Attachment A
Docket Number: 2009-0552-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Lee-Var, Inc. dba Palmer of Texas
Penalty Amount:	Forty-Three Thousand Seven Hundred Fifty Dollars (\$43,750)
SEP Offset Amount:	Twenty-One Thousand Eight Hundred Seventy-Five Dollars (\$21,875)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas PTA – <i>Clean School Bus Program</i>
Location of SEP:	Texas Air Quality Control Region 218

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 Offset 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 the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **Texas PTA** for the *Clean School Bus Program* as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to reimburse local school districts for the cost of the following activities to reduce emissions: 1) replacing older diesel buses with alternative fuelled or clean diesel buses; or 2) retrofitting older diesel buses with new, cleaner technology. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions on buses by more than 90% below today’s level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset 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 Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Texas Congress of Parents and Teachers dba Texas PTA
Clean School Bus Program
Suzy Swan, Director of Finance
408 West 11th Street
Austin, Texas 78707

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset 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 expenditure of the SEP Offset 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 Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3087

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 a 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 October 30, 2008

DATES	Assigned	13-Apr-2009			
	PCW	29-May-2009	Screening	14-Apr-2009	EPA Due 5-Jan-2010

RESPONDENT/FACILITY INFORMATION	
Respondent	Lee-Var, Inc. dba Palmer of Texas
Reg. Ent. Ref. No.	RN100213594
Facility/Site Region	7-Midland
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	34860	No. of Violations	4
Docket No.	2009-0552-AIR-E	Order Type	Findings
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Suzanne Walrath
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **Subtotals 2, 3, & 7**

Notes The Respondent has received two Notices of Violation for same or similar violations, and has received two Agreed Orders containing denials of liability.

Culpability **Subtotal 4**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit **Subtotal 6**

Total EB Amounts
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL **Reduction Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral is recommended for Findings Orders.

PAYABLE PENALTY

Screening Date 14-Apr-2009

Docket No. 2009-0552-AIR-E

PCW

Respondent Lee-Var, Inc. dba Palmer of Texas

Policy Revision 2 (September 2002)

Case ID No. 34860

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100213594

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

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 (number of NOVs meeting criteria)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	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) 50%

>> **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

The Respondent has received two Notices of Violation for same or similar violations, and has received two Agreed Orders containing denials of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 50%

Screening Date	14-Apr-2009	Docket No.	2009-0552-AIR-E	PCW
Respondent	Lee-Var, Inc. dba Palmer of Texas			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	34860			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN100213594			
Media [Statute]	Air			
Enf. Coordinator	Suzanne Walrath			

Violation Number	1
Rule Cite(s)	Agreed Order Docket No. 2007-1724-AIR-E, Ordering Provision Nos. 2.a. and 2.b., 30 Tex. Admin. Code §§ 101.20(2) and 122.143(4), 40 Code of Federal Regulations ("CFR") § 63.5605(b), Federal Operating Permit ("FOP") No. O-02704, Special Terms & Conditions ("STC") 1D and Tex. Health & Safety Code § 382.085(b)
Violation Description	Failed to comply with emission standards for hazardous air pollutants ("HAPs"). Specifically, the Respondent exceeded the average emission limit range of 151.23 to 156.9 pounds per ton of styrene 7 times during the period from June 2008 through December 2008 by 114.4% to 124.7%.
Base Penalty	\$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			X	25%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$7,500

Adjustment \$7,500

Subtotal \$2,500

Violation Events

Number of Violation Events	3	Number of violation days	210
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<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$7,500

Three quarterly events are recommended for the period from the effective date of the agreed order (June 5, 2008) through December 31, 2008.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

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

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$945	Violation Final Penalty Total \$11,250
This violation Final Assessed Penalty (adjusted for limits) \$11,250	

Economic Benefit Worksheet

Respondent: Lee-Var, Inc. dba Palmer of Texas
Case ID No.: 34860
Reg. Ent. Reference No.: RN100213594
Media: Air
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$5,000	5-Jun-2008	1-Jan-2010	1.58	\$26	\$525	\$551
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)	\$5,000	5-Jun-2008	1-Jan-2010	1.58	\$394	n/a	\$394

Notes for DELAYED costs

These are additional costs for implementing measures and/or installing equipment that will ensure that the Plant can comply with allowable emission limits for HAP emissions. Date required is the date of the beginning of the violation period. Final date is the projected date of compliance.

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

\$10,000

TOTAL

\$945

Screening Date: 14-Apr-2009	Docket No.: 2009-0552-AIR-E	PCW																		
Respondent: Lee-Var, Inc. dba Palmer of Texas	<i>Policy Revision 2 (September 2002)</i>																			
Case ID No.: 34860	<i>PCW Revision October 30, 2008</i>																			
Reg. Ent. Reference No.: RN100213594																				
Media [Statute]: Air																				
Enf. Coordinator: Suzanne Walrath																				
Violation Number: 2																				
Rule Cite(s):	30 Tex. Admin. Code §§ 101.20(2) and 122.143(4); 40 CFR § 63.3910(c); 63.3920(a)(1)(II); FOP No. O-02704, STC 1D and Tex. Health & Safety Code § 382.085(b)																			
Violation Description:	The Respondent failed to timely submit two Subpart M notification of compliance status reports. Specifically, the Respondent failed to submit the initial compliance status report, which was due no later than March 2, 2008, until February 9, 2009; and failed to submit the semi-annual compliance status report, which was due no later than July 31, 2008, until February 25, 2009.																			
Base Penalty:	\$10,000																			
>> Environmental, Property and Human Health Matrix																				
OR	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th colspan="3">Harm</th> <td></td> </tr> <tr> <td>Release</td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td>Actual</td> <td></td> <td></td> <td></td> <td rowspan="2" style="text-align: right;">Percent 0%</td> </tr> <tr> <td>Potential</td> <td></td> <td></td> <td></td> </tr> </table>		Harm				Release	Major	Moderate	Minor		Actual				Percent 0%	Potential			
	Harm																			
Release	Major	Moderate	Minor																	
Actual				Percent 0%																
Potential																				
>> Programmatic Matrix																				
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th>Falsification</th> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">x</td> <td></td> <td></td> <td rowspan="2" style="text-align: right;">Percent 25%</td> </tr> </table>		Falsification	Major	Moderate	Minor				x			Percent 25%							
	Falsification	Major	Moderate	Minor																
		x			Percent 25%															
Matrix Notes:	100% of the rule requirement was not met.																			
Adjustment:	\$7,500																			
\$2,500																				
Violation Events																				
Number of Violation Events:	2																			
	554	Number of violation days																		
Violation Base Penalty:	\$5,000																			
Violation Subtotal:	\$3,750																			
Good Faith Efforts to Comply																				
	25.0% Reduction	\$1,250																		
	Before NOV NOV to EDPRP/Settlement Offer																			
Extraordinary																				
Ordinary	x																			
N/A		(mark with x)																		
Notes:	The Respondent achieved compliance for this violation on February 25, 2009.																			
Economic Benefit (EB) for this violation																				
Estimated EB Amount:	\$25																			
Statutory Limit Test																				
Violation Final Penalty Total:	\$6,250																			
This violation Final Assessed Penalty (adjusted for limits): \$6,250																				

Economic Benefit Worksheet

Respondent: Lee-Var, Inc. dba Palmer of Texas
Case ID No: 34860
Reg. Ent. Reference No: RN100213594
Media: Air
Violation No.: 2

Percent Interest	Years of Depreciation
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				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)	\$500	2-Mar-2008	25-Feb-2009	0.99	\$25	n/a	\$25

Notes for DELAYED costs

This is the approximate cost for submitting two notifications of compliance, beginning on the date the first one was due to be submitted, and ending on the date compliance was achieved.

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

\$500	TOTAL:	\$25
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Screening Date: 14-Apr-2009		Docket No.: 2009-0552-AIR-E		PCW
Respondent: Lee-Var, Inc. dba Palmer of Texas			<i>Policy Revision 2 (September 2002)</i>	
Case ID No.: 34860			<i>PCW Revision October 30, 2008</i>	
Reg. Ent. Reference No.: RN100213594				
Media [Statute]: Air				
Enf. Coordinator: Suzanne Wairath				
Violation Number:		<input type="text" value="3"/>		
Rule Cite(s):		30 Tex. Admin. Code §§ 101.20(2) and 122.143(4), 40 CFR § 63.3890(b)(1), FOP No. G-02704, STC 1D and Tex. Health & Safety Code § 382.085(b)		
Violation Description:		<p>The Respondent exceeded the 12-month HAP emission limit of 2.6 pounds organic HAPs per gallon ("lbs HAPs/gal") of coating solids. Specifically, the Respondent exceeded the allowable limit for styrene during the initial compliance period by 39% as the actual rate was 3.59 lbs HAPs/gal; and also during the subsequent compliance period by 38% to 67% as the actual range was 3.699 lbs HAPs/gal to 4.329 lbs HAPs/gal. See tables attached.</p>		
Base Penalty				<input type="text" value="\$10,000"/>
>> Environmental, Property and Human Health Matrix				
OR	Release		Harm	
	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="25%"/>
>> Programmatic Matrix				
Falsification		Major	Moderate	Minor
<input type="text"/>		<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="0%"/>
Matrix Notes		Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.		
Adjustment				<input type="text" value="\$7,500"/>
				<input type="text" value="\$2,500"/>
Violation Events				
Number of Violation Events		<input type="text" value="4"/>		Number of violation days <input type="text" value="335"/>
<i>mark only one with an x</i>	daily	<input type="text"/>		Violation Base Penalty <input type="text" value="\$10,000"/>
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input checked="" type="checkbox"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
single event		<input type="text"/>		
<p>Four quarterly events are recommended for the four quarters from the end of the initial compliance period (January 31, 2008) through the end of the subsequent continuous compliance period (December 31, 2008).</p>				
Good Faith Efforts to Comply		0.0% Reduction		<input type="text" value="\$0"/>
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary		<input type="text"/>		
Ordinary		<input type="text"/>		
N/A		<input checked="" type="checkbox"/>	(mark with x)	
Notes		The Respondent does not meet the good faith criteria for this violation.		
Violation Subtotal				<input type="text" value="\$10,000"/>
Economic Benefit (EB) for this violation				
Estimated EB Amount		<input type="text" value="\$0"/>		Statutory Limit Test
				Violation Final Penalty Total <input type="text" value="\$15,000"/>
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$15,000"/>

Economic Benefit Worksheet

Respondent: Lee-Var, Inc. dba Palmer of Texas
Case ID No.: 34860
Reg. Ent. Reference No.: RN100213694
Media: Air
Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit included in Violation No. 1.

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

\$0

TOTAL

\$0

Screening Date: 14-Apr-2009	Docket No.: 2009-0552-AIR-E	PCW
Respondent: Lee-Var, Inc. dba Palmer of Texas	Policy Revision 2 (September 2002)	
Case ID No.: 34860	PCW Revision October 30, 2008	
Reg. Ent. Reference No.: RN100213594		
Media [Statute]: Air		
Enf. Coordinator: Suzanne Walrath		
Violation Number: 4		
Rule Cite(s):	30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)	
Violation Description:	The Respondent failed to obtain air permit authorization for the surface coating and abrasive blasting operations.	
Base Penalty:	\$10,000	

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential				
				0%	

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		x			
100% of the rule requirement was not met.					
Adjustment:					\$7,500

Violation Events

Number of Violation Events:	3	Number of violation days:	61	Violation Base Penalty:	\$7,500
mark only one with an x	daily				
	weekly				
	monthly	x			
	quarterly				
	semiannual				
	annual				
	single event				
Three monthly events are recommended from the date of the investigation (February 12, 2009) to case screening date (April 14, 2009).					

Good Faith Efforts to Comply

0.0% Reduction		\$0
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)
Notes:	The Respondent does not meet the good faith criteria for this violation.	
Violation Subtotal:		\$7,500

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount: \$265	Violation Final Penalty Total: \$11,250
This violation Final Assessed Penalty (adjusted for limits): \$11,250	

Economic Benefit Worksheet

Respondent: Lee-Var, Inc. dba Palmer of Texas
Case ID No.: 34880
Reg. Ent. Reference No.: RN100213594
Media: Air
Violation No.: 4

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount	
Equipment	\$2,500	12-Feb-2009	1-Jan-2010	0.88	\$7	\$147	\$155
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	\$2,500	12-Feb-2009	1-Jan-2010	0.88	\$111	n/a	\$111
Other (as needed)			0.00	\$0	n/a	\$0	

Notes for DELAYED costs

This is the estimated cost of obtaining a new air permit and for implementing measures and/or installing equipment that will ensure that the Plant can comply with allowable VOC limits, beginning on the date of the investigation, and ending on the projected date of compliance.

Avoided Costs

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

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

\$5,000

TOTAL

\$265

Lee-Var, Inc. dba Palmer of Texas, RN100213594
DOCKET NO. 2009-0552-AIR-E
CASE NO. 34860, Violation No. 3

Initial Compliance Period	12-month HAP Average (lbs HAPs/gal)
HAP Limit	2.60
January 2008	3.59

Continuous Compliance Period	12-month HAP Average (lbs HAPs/gal)
HAP Limit	2.60
February 2008	3.73
March 2008	3.599
April 2008	3.698
May 2008	3.815
June 2008	3.888
July 2008	4.085
August 2008	4.235
September 2008	4.221
October 2008	4.199
November 2008	4.329
December 2008	4.302

Compliance History Report

Customer/Respondent/Owner-Operator: CN600126924 Lee-Var Inc. dba Palmer of Texas Classification: AVERAGE Rating: 6.61
Regulated Entity: RN100213594 PALMER OF TEXAS ANDREWS PLANT Classification: AVERAGE Site Rating: 9.67

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	AB0023R
	AIR OPERATING PERMITS	PERMIT	2704
	AIR NEW SOURCE PERMITS	PERMIT	7630
	AIR NEW SOURCE PERMITS	PERMIT	25359
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	AB0023R
	AIR NEW SOURCE PERMITS	AFS NUM	4800300014
	AIR NEW SOURCE PERMITS	REGISTRATION	80749

Location: 1701 N US Highway 385

TCEQ Region: REGION 07 - MIDLAND

Date Compliance History Prepared: April 14, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 14, 2004 to April 14, 2009

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

Name: Suzanne Walrath Phone: 239 - 2134

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

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

Effective Date: 04/14/2006 ADMINORDER 2005-1331-WQ-E

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

30 TAC Chapter 281, SubChapter A 281.25(a)(4)

40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26

Description: Failure to obtain Multi-Sector General Permit.

Effective Date: 06/05/2008 ADMINORDER 2007-1724-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(2)

30 TAC Chapter 122, SubChapter B 122.143(4)

40 CFR Chapter 63, SubChapter C, PT 63, SubPT WWWW 63.5805(b)

5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: Special Terms and Conditions 1.D. OP

Description: Failure to comply with 30 TAC 101.20(2) - Environmental Protection Agency Standards regarding emissions standards for HAP styrene 3 instances.

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	03/07/2005	(373330)
2	03/27/2006	(459347)
3	10/04/2007	(595655)
4	04/06/2009	(740790)
5	04/10/2009	(741259)

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

Date: 10/03/2007 (595750)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 101, SubChapter A 101.20(2)

5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failure to comply with 30 TAC 101.20(2)- Compliance with Environmental Protection Agency Standards of applicable emissions standards for HAPS. Pursuit to 40 CFR 63 Subpart WWWW 63.5910(d) - incorrectly reported 3 deviations as 1.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 101, SubChapter A 101.20(2)

40 CFR Chapter 63, SubChapter C, PT 63, SubPT WWWW 63.5910(b)(4)

Description: Failure to comply with 30 TAC 101.20(2)- Compliance with Environmental Protection Agency Standards for HAPs. Late submittal of Second Semi-Annual Compliance Report for 07/01/2006 - 12/31/2006 required under 40 CFR 63.5910(b)(4) was due by 01/31/2007. Submitted on 05/29/2007.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure to comply with 30 TAC 116.110(a)(4)-New Source Review Permits. This is an alleged violation of Standard Exemption #75(e)(2)(i) now referred to as a PBR - Data shall be reduced monthly and a report produced monthly and #75 (e)(2)(ii) - The reports shall be completed no later than the 15th day of the following month.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure to comply with 30 TAC 116.110(a)(4)-New Source Review Permits which requires the RE to satisfy the conditions for facilities permitted by rule under 30 TAC 106 (relating to PBRs). VOC emissions from spray painting exceeded the 6.0 lb/hr emission limit on 114 days.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure to comply with 30 TAC 116.110(a)(4)-New Source Review Permits which requires the Regulated Entity to satisfy the conditions for facilities permitted by rule under 30 TAC 106 (relating to PBRs). More than one outdoor spray painting operation was on-going at the same time at the facility.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure to comply with 30 TAC 116.110(a)(4)-New Source Review Permits which requires satisfying the conditions for facilities permitted by rule under 30 TAC 106 (relating to PBRs). Emissions from sandblasting exceeded the one ton per day limit of Standard Exemption #102(b)(1)- Dry Abrasive Cleaning usage rate, which is now referred to as a PBR.

Date: 04/10/2009 (741259)

Self Report? NO

Classification: Moderate

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

5C THSC Chapter 382 382.085(b)

Description: Failure to submit a semi-annual deviation report on time. This is an alleged violation of 30 TAC 122.145(2)(C).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(2)

40 CFR Chapter 63, SubChapter C, PT 63, SubPT MMMM 63.3910(b)

5C THSC Chapter 382 382.085(b)

Description: Failure to submit the 40 CFR 63 Subpart MMMM Initial Notification as required by 40 CFR 63.3910(b) which was due January 2, 2005 but not submitted September 5, 2008, three plus years late.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 106, SubChapter S 106.433(6)(A)
30 TAC Chapter 116, SubChapter B 116.110(a)(4)
5C THSC Chapter 382 382.085(b)

Description: Failure to comply with the weekly emissions limits of 500 pounds per week VOC set forth in SE 75(c)(3) while operating under the standard exemption and 30 TAC 106.433(6)(A) while operating under the permit by rule.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 106, SubChapter T 106.452(2)(A)
5C THSC Chapter 382 382.085(b)

Description: Failure to comply with the abrasive cleaning usage rate of 15 tons per month per 106.452(a)(A).

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**ENFORCEMENT ACTION
CONCERNING
LEE-VAR, INC. DBA PALMER OF
TEXAS
RN100213594**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-0552-AIR-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Lee-Var, Inc. dba Palmer of Texas ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a fiberglass tank manufacturing plant at 1701 North United States Highway 385 in Andrews, Andrews County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. During a record review on February 12, 2009, TCEQ staff documented that the Respondent failed to comply with emission standards for Hazardous Air Pollutants (“HAPs”). Specifically, the Respondent exceeded the average emission limit range of 151.23 to 156.9 pounds per ton of styrene 7 times during the period from June 2008 through December 2008 by 114.4% to 124.7%.
4. During a record review on February 12, 2009, TCEQ staff documented that the Respondent failed to timely submit two Subpart M notification of compliance status reports. Specifically, the Respondent failed to submit the initial compliance status report, which was due no later than March 2, 2008, until February 9, 2009; and failed to submit the semi-annual compliance status report, which was due no later than July 31, 2008, until February 25, 2009.
5. During a record review on February 12, 2009, TCEQ staff documented that the Respondent exceeded the 12-month HAP emission limit of 2.6 pounds organic HAPs per gallon (“lbs HAPs/gal”) of coating solids. Specifically, the Respondent exceeded the allowable limit for styrene during the initial compliance period by 39% as the actual rate was 3.59 lbs HAPs/gal; and also during the subsequent compliance period by 38% to 67% as the actual range was 3.599 lbs HAPs/gal to 4.329 lbs HAPs/gal. See tables below:

Initial Compliance Period	12-month HAP Average (lbs HAPs/gal)
HAP Limit	2.60
January 2008	3.59

Continuous Compliance Period	12-month HAP Average (lbs HAPs/gal)
HAP Limit	2.60
February 2008	3.73
March 2008	3.599
April 2008	3.698
May 2008	3.815
June 2008	3.888
July 2008	4.085
August 2008	4.235
September 2008	4.221
October 2008	4.199
November 2008	4.329
December 2008	4.302

6. During a record review on February 12, 2009, TCEQ staff documented that the Respondent failed to obtain air permit authorization for the surface coating and abrasive blasting operations.
7. The Respondent received notice of the violations on April 13, 2009.

8. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:
 - a. On February 9, 2009, submitted the initial Subpart MMMM notification of compliance status report; and
 - b. On February 25, 2009, submitted the first semi-annual Subpart MMMM notification of compliance status report.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to comply with emission standards for HAPs, in violation of Agreed Order Docket No. 2007-1724-AIR-E, Ordering Provision Nos. 2.a. and 2.b., 30 TEX. ADMIN. CODE §§ 101.20(2) and 122.143(4), 40 CODE OF FEDERAL REGULATIONS ("CFR") § 63.5805(b), Federal Operating Permit ("FOP") No. O-02704, Special Terms & Conditions ("STC") 1D and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Findings of Fact No. 4, the Respondent failed to timely submit two Subpart MMMM notification of compliance status reports, in violation of 30 TEX. ADMIN. CODE §§ 101.20(2) and 122.143(4), 40 CFR §§ 63.3910(c), 63.3920(a)(1)(ii), FOP No. O-02704, STC 1D and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. As evidenced by Findings of Fact No. 5, the Respondent exceeded the 12-month HAP emission limit of 2.6 lbs HAPs/gal of coating solids, in violation of 30 TEX. ADMIN. CODE §§ 101.20(2) and 122.143(4), 40 CFR § 63.3890(b)(1), FOP No. O-02704, STC 1D and TEX. HEALTH & SAFETY CODE § 382.085(b).
5. As evidenced by Findings of Fact No. 6, the Respondent failed to obtain air permit authorization for the surface coating and abrasive blasting operations, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.0518(a).
6. Pursuant to TEX. WATER CODE § 7.051 the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of Forty-Three Thousand Seven Hundred Fifty Dollars (\$43,750) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Twenty-One Thousand Eight Hundred Seventy-Five Dollar (\$21,875) administrative penalty. Twenty-One Thousand Eight Hundred Seventy-Five Dollars (\$21,875) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Forty-Three Thousand Seven Hundred Fifty Dollars (\$43,750) as set forth in Section II, Paragraph 7 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Lee-Var, Inc. dba Palmer of Texas, Docket No. 2009-0552-AIR-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 SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 7 above, Twenty-One Thousand Eight Hundred Seventy-Five Dollars (\$21,875) of the assessed administrative penalty shall be offset with the condition that 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 Respondent shall undertake the following technical requirements:

- a. Within 15 days after the effective date of this Agreed Order, submit an administratively complete air permit application, in accordance with 30 TEX. ADMIN. CODE § 116.110 to:

Air Permits Division, MC 162
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing;
- c. Within 120 days after the effective date of this Agreed Order, implement measures and/or install equipment that will ensure that the Plant can comply with HAP emission limits, in

accordance with 40 CFR §§ 63.3890(b)(1) and 63.5805(b);

- d. Within 135 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 3.c. in accordance with Ordering Provision 3.e.; and
- e. Within 240 days after the effective date of this Agreed Order, submit written certification that either authorization to construct and operate a source of air emissions has been obtained or that operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public, and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Air Section, Manager
Midland Regional Office
Texas Commission on Environmental Quality
3300 North A Street, Building 4-207
Midland, Texas 79705-6506

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
5. 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.

6. 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.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
8. 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.
9. 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.
10. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
11. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

10/3/2009
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Lee-Var, Inc. dba Palmer of Texas. I am authorized to agree to the attached Agreed Order on behalf of Lee-Var, Inc. dba Palmer of Texas, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Lee-Var, Inc. dba Palmer of Texas waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

8/17/09
Date

JIM D LEE

Name (Printed or typed)
Authorized Representative of
Lee-Var, Inc. dba Palmer of Texas

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: 2009-0552-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Lee-Var, Inc. dba Palmer of Texas

Penalty Amount: Forty-Three Thousand Seven Hundred Fifty Dollars (\$43,750)

SEP Offset Amount: Twenty-One Thousand Eight Hundred Seventy-Five Dollars (\$21,875)

Type of SEP: Pre-approved

Third-Party Recipient: Texas PTA – *Clean School Bus Program*

Location of SEP: Texas Air Quality Control Region 218

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 Offset 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 the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to *Texas PTA* for the *Clean School Bus Program* as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to reimburse local school districts for the cost of the following activities to reduce emissions: 1) replacing older diesel buses with alternative fuelled or clean diesel buses; or 2) retrofitting older diesel buses with new, cleaner technology. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions on buses by more than 90% below today’s level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset 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 Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Texas Congress of Parents and Teachers dba Texas PTA
Clean School Bus Program
Suzy Swan, Director of Finance
408 West 11th Street
Austin, Texas 78707

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset 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 expenditure of the SEP Offset 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 Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3087

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 a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

