

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1588-AIR-E TCEQ ID: RN100224815 CASE NO.: 36620

RESPONDENT NAME: KM Liquids Terminals LLC

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

SITE WHERE VIOLATION(S) OCCURRED: Pasadena Terminal, 530 Witter Street, Pasadena, Harris County

TYPE OF OPERATION: Petroleum liquids storage terminal

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 9, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768
TCEQ Enforcement Coordinator: Ms. Roshondra Lowe, Enforcement Division, Enforcement Team 5, MC R-10, (713) 767-3553;
 Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387
Respondent: Ms. Christina Harris, Manager - Environmental Permitting and Compliance, KM Liquids Terminals LLC, 530 Witter Street, Pasadena, Texas 77506
 Mr. Louis J. Zimmerman, Vice President, KM Liquids Terminals LLC, 530 Witter Street, Pasadena, Texas 77506
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 25, 2008</p> <p>Date of NOV/NOE Relating to this Case: September 4, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>Failure to prevent unauthorized emissions. Specifically, on January 28, 2008, an emissions event resulted when Tank T150-23 developed a crack in a seam of the floor plate releasing 66,370.46 pounds of volatile organic compounds ("VOC") for one hour. Since these emissions were avoidable by better maintenance practices and determined to be excessive, the Respondent failed to meet the demonstrations necessary to present an affirmative defense in 30 TEX. ADMIN. CODE § 101.222 [30 TEX. ADMIN. CODE § 116.115(c), Air Permit No. 5171, Special Condition No. 1 and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$10,000</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$5,000</p> <p>Total Paid (Due) to General Revenue: \$5,000</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 emissions which were deemed excessive.</p>	<p>Ordering Provisions:</p> <p>1) The Order will require the Respondent 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. Comply with the TCEQ request dated September 5, 2008 for submittal of a corrective action plan ("CAP") to address the excessive emissions event that occurred January 28, 2008;</p> <p>b. Respond completely and adequately, as determined by the Executive Director, to all written requests for information concerning the submitted CAP within 15 days after the date of such requests, or by other deadline specified in writing;</p> <p>c. Upon Commission approval, implement the CAP in accordance with the approved schedule; and</p> <p>d. Upon completion of CAP implementation, submit written certification to demonstrate compliance with Ordering Provisions 2.a. through 2.c.</p>

Additional ID No(s): Air HG0261J

Attachment A
Docket Number: 2008-1588-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: KM Liquids Terminals LLC
Payable Penalty Amount: Ten Thousand Dollars (\$10,000)
SEP Amount: Five Thousand Dollars (\$5,000)
Type of SEP: Pre-approved
Third-Party Recipient: Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program
Location of SEP: Harris 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 will contribute to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program in Harris County. The contribution will be used in accordance with the *Supplemental Environmental Project Agreement between the Houston-Galveston AERCO and the Texas Commission on Environmental Quality*. SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration's ("FHWA") Congestion Mitigation/Air Quality funding program. SEP monies will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. Those SEP monies will be used exclusively by the school districts and transit agencies as supplements to meet the local match requirements of the EPA. SEP monies will be used to pay for the cost of replacing older diesel buses with alternative fueled or clean diesel buses. The old buses will be permanently retired and only sold for scrap. The schools and transit agencies will also use the SEP monies to retrofit more buses to reduce emissions. Houston-Galveston AERCO will send the TCEQ verification in the form of paid invoices and other documentation to show that the retrofits were completed. Retrofit technologies include particulate matter traps, diesel particulate matter filters, NOx reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by EPA or the California Air Resources Board.

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 reducing particulate emissions of 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 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:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, Texas 77227-2777

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:

KM Liquids Terminals LLC
Agreed Order - Attachment A

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
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.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision June 12, 2008

DATES	Assigned	4-Sep-2008	Screening	29-Sep-2008	EPA Due	
	PCW	6-Oct-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	KM Liquids Terminals LLC		
Reg. Ent. Ref. No.	RN100224815		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	36620	No. of Violations	1
Docket No.	2008-1588-AIR-E	Order Type	Findings
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Daniel Siringi
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	56.0% Enhancement	Subtotals 2, 3, & 7	\$5,600
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Notes: Enhancement due to one NOV with same or similar violations, three NOVs with unrelated violations, one 1660 Agreed Order and one Findings Order.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$425
 Approx. Cost of Compliance \$5,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$15,600
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$15,600
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,000
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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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	\$10,000
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Screening Date 29-Sep-2008

Docket No. 2008-1588-AIR-E

PCW

Respondent KM Liquids Terminals LLC

Policy Revision 2 (September 2002)

Case ID No. 36620

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN100224815

Media [Statute] Air

Enf. Coordinator Daniel Siringi

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)	1	5%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
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) 56%

>> 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

Enhancement due to one NOV with same or similar violations, three NOVs with unrelated violations, one 1660 Agreed Order and one Findings Order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 56%

Screening Date 29-Sep-2008	Docket No. 2008-1588-AIR-E	PCW		
Respondent KM Liquids Terminals LLC	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36620	<i>PCW Revision June 12, 2008</i>			
Reg. Ent. Reference No. RN100224815				
Media [Statute] Air				
Enf. Coordinator Daniel Siringi				
Violation Number <input type="text" value="1"/>				
Rule Cite(s)	30 Tex. Admin. Code § 116.115(c), Air Permit No. 5171, Special Condition No. 1 and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to prevent unauthorized emissions. Specifically, on January 28, 2008, an emissions event resulted when Tank T150-23 developed a crack in a seam of the floor plate releasing 66,370.46 pounds of volatile organic compounds ("VOC") for one hour. Since these emissions were avoidable by better maintenance practices and determined to be excessive, the Respondent failed to meet the demonstrations necessary to present an affirmative defense in 30 Tex. Admin. Code § 101.222.			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	<input type="text" value="100%"/>	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	<input type="text" value="0%"/>	
Matrix Notes	Human health or the environment has been exposed to significant amounts of pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.			
		Adjustment	<input type="text" value="\$0"/>	
		<input type="text" value="\$10,000"/>		
Violation Events				
Number of Violation Events <input type="text" value="1"/>		Number of violation days <input type="text" value="1"/>		
<i>mark only one with an x</i>	daily	<input checked="" type="checkbox"/>	Violation Base Penalty <input type="text" value="\$10,000"/>	
	monthly	<input type="checkbox"/>		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input type="checkbox"/>		
One daily event is recommended.				
Good Faith Efforts to Comply		0.0% Reduction	<input type="text" value="\$0"/>	
		Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>		
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>		
N/A	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(mark with x)	
Notes	The Respondent does not meet good faith criteria for this violation.			
		Violation Subtotal	<input type="text" value="\$10,000"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	<input type="text" value="\$425"/>	Violation Final Penalty Total	<input type="text" value="\$15,600"/>	
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$10,000"/>		

Economic Benefit Worksheet

Respondent KM Liquids Terminals LLC
Case ID No. 36620
Reg. Ent. Reference No. RN100224815
Media Air
Violation No. 1

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	\$4,500	28-Jan-2008	28-Mar-2009	1.16	\$17	\$349	\$367
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	28-Jan-2008	28-Mar-2009	1.16	\$58	n/a	\$58

Notes for DELAYED costs

Estimated cost for detecting and repairing the seams of the floor plate for Tank T150-23. Date required based on the date of the emissions event. Final date is based on the date all corrective action is expected to be implemented.

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

\$5,500

TOTAL

\$425

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603254707 KM Liquids Terminals LLC	Classification: AVERAGE	Rating: 2.84
Regulated Entity:	RN100224815 PASADENA TERMINAL	Classification: AVERAGE	Site Rating: 6.26
ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	HG0261J
	AIR OPERATING PERMITS	PERMIT	984
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	27315
	AIR NEW SOURCE PERMITS	PERMIT	5171
	AIR NEW SOURCE PERMITS	PERMIT	8477
	AIR NEW SOURCE PERMITS	PERMIT	25272
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HG0261J
	AIR NEW SOURCE PERMITS	REGISTRATION	75933
	AIR NEW SOURCE PERMITS	REGISTRATION	75567
	AIR NEW SOURCE PERMITS	REGISTRATION	74333
	AIR NEW SOURCE PERMITS	REGISTRATION	75160
	AIR NEW SOURCE PERMITS	REGISTRATION	76487
	AIR NEW SOURCE PERMITS	AFS NUM	4820100092
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD070137161
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	30772
	IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION # (SWR)	30772

Location: 530 WITTER ST, PASADENA, TX, 77506 Rating Date: 9/1/2008 Repeat Violator: NO

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: October 07, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 10, 2003 to September 10, 2008

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

Name: Daniel Siringi Phone: (409) 899-8799

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? Yes
3. If Yes, who is the current owner? Kinder Morgan, Inc.
KM Liquids Terminals, L. P.
KM Liquids Terminals LLC
4. If Yes, who was/were the prior owner(s)? Kinder Morgan Liquids Terminals LLC
5. When did the change(s) in ownership occur? 12/08/2004

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: 08/31/2007	ADMINORDER 2007-0072-AIR-E
Classification: Moderate	
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)	
Rqmt Prov: No. 5171, Special Condition 1 PERMIT	
Description: Failed to prevent unauthorized emissions during a September 30, 2006 emissions event.	
Classification: Minor	
Citation: 30 TAC Chapter 101, SubChapter F 101.201(a)(1)(B) 5C THC Chapter 382, SubChapter D 382.085(b)	
Description: Failed to submit an initial notification for the September 30, 2006 emissions event within twenty-four hours of discovery.	
Effective Date: 01/12/2008	ADMINORDER 2007-0754-AIR-E
Classification: Moderate	
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c) 5C THC Chapter 382, SubChapter A 382.085(b)	
Rqmt Prov: No. 5171, Special Condition 1 PERMIT	
Description: Failed to prevent unauthorized emissions. Specifically, on May 31, 2006 an emissions event resulted when Tank 17-1 overflowed into a spill containment area releasing 11,221 pounds of volatile organic compounds ("VOC") to the atmosphere for a period of 8 hours. The permit allowables of VOC are 0.14 pounds per hour. Since this emissions event was avoidable, KM Liquids failed to meet the demonstrations for an affirmative defense as described in 30 Tex. Admin. Code § 101.222(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	07/27/2004	(280957)
2	08/11/2004	(251128)
3	08/23/2004	(261947)
4	08/29/2005	(405934)
5	03/08/2006	(450115)
6	05/17/2006	(463933)
7	05/17/2006	(465626)
8	05/23/2006	(465782)
9	06/02/2006	(481256)
10	06/30/2006	(484076)
11	07/28/2006	(486975)
12	07/31/2006	(489238)
13	08/14/2006	(457292)
14	10/27/2006	(515175)
15	01/04/2007	(534584)
16	05/04/2007	(487160)
17	08/16/2007	(512634)
18	09/19/2007	(572769)
19	02/15/2008	(618701)
20	04/09/2008	(612986)
21	07/22/2008	(637064)
22	08/28/2008	(681445)
23	09/05/2008	(618338)

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

Date: 08/30/2005 (405934)

Self NO Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)

30 TAC Chapter 122, SubChapter B 122.143(4)

Rqmt Prov: OP FOP# 0984, SC17(A)

PERMIT NSR Permit# 5171, SC#3

Description: Failure to operate without permit by rule authorization

Self NO Classification: Minor

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)

30 TAC Chapter 122, SubChapter B 122.143(4)

Rqmt Prov: OP FOP# 0984, SC 17(A)

PERMIT NSR Permit No. 49042, SC #4

Description: Failure to implement the fugitive monitoring program.

Self NO Classification: Minor

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

40 CFR Chapter 60, SubChapter C, PT 60, SubPT Kb 60.113b(b)(1)(ii)

Rqmt Prov: OP FOP# 0984, SC 1(A)

Description: Failure to perform a yearly seal gap inspection for T130-8

Self NO Classification: Moderate

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

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

Rqmt Prov:

OP FOP # 0984, General Terms and Conditions

Description: Failure to include in the deviation report two spill incidents of unauthorized emissions which occurred on 8/5/04 and 1/5/05.

Date: 03/09/2006 (450115)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 101, SubChapter F 101.201(b)(11)

30 TAC Chapter 101, SubChapter F 101.201(b)(8)

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

Description: Failure to maintain complete records of emission events.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 101, SubChapter F 101.211(b)(9)

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

Description: Failure to maintain complete records of Scheduled Maintenance, Startup and Shutdown activities.

Date: 05/19/2006 (463933)

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 5C THC Chapter 382, SubChapter A 382.085(b)		
Rqmt Prov:	PERMIT TCEQ Permit #5171, Special Condition 1		
Description:	Failure to prevent unauthorized emissions.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 101, SubChapter F 101.201(b)(8)		
Description:	Failure to include in the final report, the preconstruction authorization number governing the facility involved in an emissions event.		
Date:	08/16/2007 (512634)		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 122, SubChapter B 122.143(4) 40 CFR Chapter 60, SubChapter C, PT 60, SubPT Kb 60.113b(b)(5) 5C THC Chapter 382, SubChapter D 382.085(b)		
Rqmt Prov:	OP O-0984, Special Terms & Cond. No. 1(A)		
Description:	Failure to notify TCEQ 30 days in advance of storage tank seal gap measurement activities.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 5C THC Chapter 382, SubChapter D 382.085(b)		
Rqmt Prov:	PERMIT No. 5171, Special Condition No. 15 OP O-0984, Special Terms & Cond. No. 15		
Description:	Failure to limit the storage of materials to those approved by NSR Permit No. 5171, Attachment B.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 40 CFR Chapter 60, SubChapter C, PT 60, SubPT Kb 60.113b(b)(4) 5C THC Chapter 382, SubChapter D 382.085(b)		
Rqmt Prov:	PERMIT No. 5171, Special Condition No. 11 OP O-0984, Special Terms & Cond. No. 17		
Description:	Failure to repair a seal on Tank No. 150-23 within the required time frame.		
Self Report?	NO	Classification:	Moderate.
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 40 CFR Chapter 60, SubChapter C, PT 60, SubPT Kb 60.113b(b)(6)(ii) 5C THC Chapter 382, SubChapter D 382.085(b)		
Rqmt Prov:	PERMIT No. 5171, Special Condition No. 11 OP O-0984, Special Terms & Cond. No. 17		
Description:	Failure to submit tank refill notification to TCEQ for Tank Nos. 200-3 and 130-7.		

F. Environmental audits.

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
KM LIQUIDS TERMINALS LLC
RN100224815**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-1588-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 KM Liquids Terminals LLC ("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 petroleum liquids storage terminal at 530 Witter Street in Pasadena, Harris County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an investigation on March 25, 2008, TCEQ staff documented that the Respondent failed to prevent unauthorized emissions. Specifically, on January 28, 2008, an emissions event resulted when Tank T150-23 developed a crack in a seam of the floor plate releasing 66,370.46 pounds of volatile organic compounds ("VOC") for one hour.
4. The Respondent received notice of the violations on September 9, 2008.

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 prevent unauthorized emissions, in violation of 30 TEX. ADMIN. CODE § 116.115(c), Air Permit No. 5171, Special Condition No. 1 and TEX. HEALTH & SAFETY CODE § 382.085(b). Since these emissions were avoidable by better maintenance practices and determined to be excessive, the Respondent failed to meet the demonstrations necessary to present an affirmative defense in 30 TEX. ADMIN. CODE § 101.222.
3. 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.
4. An administrative penalty in the amount of Ten Thousand Dollars (\$10,000) 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 Five Thousand Dollars (\$5,000) of the administrative penalty. Five Thousand Dollars (\$5,000) 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 Ten Thousand Dollars (\$10,000) as set forth in Section II, Paragraph 4 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: KM Liquids Terminals LLC, Docket No. 2008-1588-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 4 above, Five Thousand Dollars (\$5,000) 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 Respondent shall undertake the following technical requirements:
 - a. Comply with the TCEQ request dated September 5, 2008 for submittal of a corrective action plan ("CAP") to address the excessive emissions event that occurred January 28, 2008, in accordance with 30 TEX. ADMIN. CODE § 101.223(a)(1);
 - b. Respond completely and adequately, as determined by the Executive Director, to all written requests for information concerning the submitted CAP within 15 days after the date of such requests, or by other deadline specified in writing;
 - c. Upon Commission approval, implement the CAP in accordance with the approved schedule; and
 - d. Upon completion of CAP implementation, submit written certification to demonstrate compliance with Ordering Provisions 3.a. through 3.c. as described below:

The certification shall be notarized by a State of Texas Notary Public and include the following certification language

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

The certification shall be submitted to:

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

with a copy to:

Air Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

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 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.

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

John S. Sullivan
For the Executive Director

1/30/2009
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of KM Liquids Terminals LLC. I am authorized to agree to the attached Agreed Order on behalf of KM Liquids Terminals LLC, 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, KM Liquids Terminals LLC 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.

Louis J. Zimmerman
Signature

12-19-2008
Date

Louis J. Zimmerman
Name (Printed or typed)
Authorized Representative of
KM Liquids Terminals LLC

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: 2008-1588-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	KM Liquids Terminals LLC
Payable Penalty Amount:	Ten Thousand Dollars (\$10,000)
SEP Amount:	Five Thousand Dollars (\$5,000)
Type of SEP:	Pre-approved
Third-Party Recipient:	Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program
Location of SEP:	Harris 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 will contribute to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program in Harris County. The contribution will be used in accordance with the *Supplemental Environmental Project Agreement between the Houston-Galveston AERCO and the Texas Commission on Environmental Quality*. SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration's ("FHWA") Congestion Mitigation/Air Quality funding program. SEP monies will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. Those SEP monies will be used exclusively by the school districts and transit agencies as supplements to meet the local match requirements of the EPA. SEP monies will be used to pay for the cost of replacing older diesel buses with alternative fueled or clean diesel buses. The old buses will be permanently retired and only sold for scrap. The schools and transit agencies will also use the SEP monies to retrofit more buses to reduce emissions. Houston-Galveston AERCO will send the TCEQ verification in the form of paid invoices and other documentation to show that the retrofits were completed. Retrofit technologies include particulate matter traps, diesel particulate matter filters, NOx reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by EPA or the California Air Resources Board.

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 reducing particulate emissions of 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 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:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, Texas 77227-2777

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:

KM Liquids Terminals LLC
Agreed Order – Attachment A

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
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.

