

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2009-1748-AIR-E **TCEQ ID:** RN102905064 **CASE NO.:** 37629  
**RESPONDENT NAME:** Kiewit Offshore Services, Ltd.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

<b>CASE TYPE:</b>		
<input 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:** 2440 Kiewit Road, Ingleside, San Patricio County

**TYPE OF OPERATION:** Offshore platform fabrication plant

**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 May 31, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney/SEP Coordinator:** None

**TCEQ Enforcement Coordinator:** Mr. Terry Murphy, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-5025; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

**Respondent:** Mr. Fuat Sezer, President, Kiewit Offshore Services, Ltd., 111 Congress Avenue, Suite 2300, Austin, Texas 78701-4061

**Respondent's Attorney:** Mr. Timothy A. Wilkins, Bracewell & Giuliani, LLP, 111 Congress Avenue, Suite 2300, Austin, Texas 78701-4061

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> October 26, 2009</p> <p><b>Date of NOE Relating to this Case:</b> June 25, 2009</p> <p><b>Background Facts:</b> This was a records review.</p> <p><b>AIR</b></p> <p>1) Failure to fully satisfy record keeping requirements and to comply with National Emissions Standards for Hazardous Air Pollutants ("NESHAP") record keeping requirements. Specifically, the Respondent failed to produce and maintain, on file, a monthly report calculating tons per year ("tpy") of hazardous air pollutant ("HAP") emissions for the preceding 12 months [New Source Review Permit ("NSRP") No. 47227, Special Condition 5.B., 30 TEX. ADMIN. CODE §§ 101.20(2) and 116.115(c), 40 CODE OF FEDERAL REGULATIONS § 63.3930, and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failure to comply with NESHAP notification requirements. Specifically, the Respondent has failed to submit an initial notification and a notification of compliance status relating to HAP emissions from surface coating of miscellaneous metal parts and products [30 TEX. ADMIN. CODE § 101.20(2), 40 CODE OF FEDERAL REGULATIONS § 63.3910(b) and (c), and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>3) Failure to submit emissions inventories. Specifically, in calendar years 2007 and 2008, the Plant emitted more than ten tpy of xylene, but the Respondent failed to submit an emissions inventory for those</p>	<p><b>Total Assessed:</b> \$29,590</p> <p><b>Total Deferred:</b> \$5,918  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$23,672</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent:</p> <p>a. By November 6, 2009, began to produce and maintain a record of HAP twelve-month emissions rates.</p> <p>b. By November 30, 2009:</p> <p>i. Submitted annual emissions inventories for the calendar years 2007 and 2008 to the TCEQ; and</p> <p>ii. Submitted an initial FOP application to the TCEQ.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete request to amend NSRP No. 47227, in order to establish limits on the Plant's xylene emissions and other relevant HAP emissions</p> <p>b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the request to amend NSRP No. 47227 and the FOP application within 30 days after the date of such requests, or by any other deadline specified in writing;</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a.;</p> <p>d. Within 180 days after the effective date of this Agreed Order:</p> <p>i. Submit written certification that either NSRP No. 47227 has been amended or that unauthorized emissions have ceased until such time that appropriate authorization is obtained;</p> <p>ii. Certify compliance with the notification requirements of 40 CODE OF FEDERAL</p>

<p>years [30 TEX. ADMIN. CODE § 101.10(a)(3) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>4) Operated emission units at its Plant without a Federal Operating Permit ("FOP"). Specifically, the Plant's actual emissions of xylene began to exceed the FOP threshold of ten tpy in October 2007, but the Respondent continued to operate without an FOP [30 TEX. ADMIN. CODE § 122.121 and TEX. HEALTH &amp; SAFETY CODE §§ 382.054 and 382.085(b)].</p> <p>5) Failure to comply with NESHAP emissions limits. Specifically, the Respondent became subject to the NESHAP emissions limits of ten tpy for xylene for surface coating of miscellaneous metal parts and products beginning October 2007, but has exceeded those limits, with a rolling average yearly emissions rate of 16.54 tons [30 TEX. ADMIN. CODE § 101.20(2), 40 CODE OF FEDERAL REGULATIONS § 63.3890, and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>		<p>REGULATIONS § 63.3910; and</p> <p>iii. Certify compliance with 40 CODE OF FEDERAL REGULATIONS § 63.3890;</p> <p>e. Within 330 days after the effective date of this Agreed Order, certify compliance with Commission rules regarding authorization to operate a source of air emissions under the Operating Permits program or cease operations until appropriate authorization is obtained; and</p> <p>f. The written certifications required by Ordering Provision Nos. c., i. through iii., and e. shall be notarized by a State of Texas Notary Public.</p>
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Additional ID: Air Account No. SD0184W





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	26-Oct-2009	Screening	18-Jun-2009	EPA Due	23-Jul-2010
	PCW	4-Mar-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Kiewit Offshore Services, Ltd.
Reg. Ent. Ref. No.	RN102905064
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Major

<b>CASE INFORMATION</b>			
Enf./Case ID No.	37629	No. of Violations	5
Docket No.	2009-1748-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Terry Murphy
		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**  Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability**   Enhancement **Subtotal 4**

Notes

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

**Economic Benefit**  Enhancement\* **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

**PAYABLE PENALTY**

Screening Date 18-Jun-2009

Docket No. 2009-1748-AIR-E

PCW

Respondent Kiewit Offshore Services, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 37629

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN102905064

Media [Statute] Air

Enf. Coordinator Terry Murphy

### 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)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (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)	1	-1%
	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) 0%

>> 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 submitted one notice of intended audit; however, because a reduction would be below zero, the enhancement defaults to zero.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 18-Jun-2009

Docket No. 2009-1748-AIR-E

PCW

Respondent Kiewit Offshore Services, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 37629

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102905064

Media [Statute] Air

Enf. Coordinator Terry Murphy

Violation Number 1

Rule Cite(s) New Source Review Permit ("NSRP") No. 47227, Special Condition 5.B., 30 Tex. Admin. Code §§ 101.20(2) and 116.115(c), 40 Code of Federal Regulations § 83.3930, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to fully satisfy record keeping requirements and to comply with National Emissions Standards for Hazardous Air Pollutants ("NESHAP") record keeping requirements, as documented during a record review conducted on October 26, 2009. Specifically, the Respondent failed to produce and maintain, on file, a monthly report calculating tons per year ("tpy") of hazardous air pollutants ("HAP") emissions for the preceding 12 months.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
			X	1%

Matrix Notes

The Respondent failed to keep less than 30% of the required records.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1 2893 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$100

One single event is recommended, based on the one set of deficient records.

Good Faith Efforts to Comply

10.0% Reduction

\$10

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

Notes The Respondent returned to compliance by November 6, 2009.

Violation Subtotal \$90

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$831

Violation Final Penalty Total \$90

This violation Final Assessed Penalty (adjusted for limits) \$90

# Economic Benefit Worksheet

**Respondent** Klewit Offshore Services, Ltd.  
**Case ID No.** 37629  
**Reg. Ent. Reference No.** RN102905064  
**Media** Air  
**Violation No.** 1

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

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Item Description 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	\$2,000	17-Jul-2001	6-Nov-2009	8.31	\$831	n/a	\$831
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated costs to implement an Improved record keeping system. The Date Required is the beginning date of the requirement to keep complete records, and the Final Date is the date the Respondent returned to compliance.

**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	\$2,000	TOTAL	\$831
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Screening Date 18-Jun-2009

Docket No. 2009-1748-AIR-E

PCW

Respondent Kiewit Offshore Services, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 37629

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102905064

Media [Statute] Air

Enf. Coordinator Terry Murphy

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 101.20(2), 40 Code of Federal Regulations § 63.3910(b) and (c), and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to comply with NESHAP notification requirements, as documented during a record review conducted on October 26, 2009. Specifically, the Respondent has failed to submit an initial notification and a notification of compliance status relating to HAP emissions from surface coating of miscellaneous metal parts and products.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification			Percent
	Major	Moderate	Minor	
	x			25%
The Respondent failed to comply with 100% of the rule.				

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 1874 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	x	

Violation Base Penalty \$5,000

Two single events are recommended, one for each of the missing notifications.

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 \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$92

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

# Economic Benefit Worksheet

**Respondent** Kiewit Offshore Services, Ltd.  
**Case ID No.** 37629  
**Reg. Ent. Reference No.** RN102905064  
**Media** Air  
**Violation No.** 2

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

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

**Delayed Costs**

	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)	\$500	2-Jan-2007	1-Sep-2010	3.87	\$92	n/a	\$92

Notes for DELAYED costs: Estimated costs to prepare and submit required notifications. The Date Required is the date the initial notification was required, and the Final Date is the estimated 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

\$500

TOTAL

\$92

Screening Date 18-Jun-2009

Docket No. 2009-1748-AIR-E

PCW

Respondent Kiewit Offshore Services, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 37629

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN102905064

Media [Statute] Air

Enf. Coordinator Terry Murphy

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 101.10(a)(3) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to submit emissions inventories, as documented during a record review conducted on October 28, 2009. Specifically, in calendar years 2007 and 2008, the Plant emitted more than ten tpy of xylene, but the Respondent failed to submit an emissions inventory for those years.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			25%

Matrix Notes

The Respondent failed to comply with 100% of the rule.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 Number of violation days 445

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	X
single event		

Violation Base Penalty \$5,000

Two annual events are recommended, based on the two annual inventories not submitted (2007 and 2008).

Good Faith Efforts to Comply

	10.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes The Respondent returned to compliance on November 30, 2009.

\$500

Violation Subtotal \$4,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$84

Violation Final Penalty Total \$4,500

This violation Final Assessed Penalty (adjusted for limits) \$4,500

# Economic Benefit Worksheet

**Respondent** Kiewit Offshore Services, Ltd.  
**Case ID No.** 37829  
**Reg. Ent. Reference No.** RN102905064  
**Media** Air  
**Violation No.** 3

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**

Equipment			0.00	\$0	\$0	\$0	
Buildings			0.00	\$0	\$0	\$0	
Other (as needed)			0.00	\$0	\$0	\$0	
Engineering/construction			0.00	\$0	\$0	\$0	
Land			0.00	\$0	n/a	\$0	
Record Keeping System			0.00	\$0	n/a	\$0	
Training/Sampling			0.00	\$0	n/a	\$0	
Remediation/Disposal			0.00	\$0	n/a	\$0	
Permit Costs			0.00	\$0	n/a	\$0	
Other (as needed)	\$1,000	30-Mar-2008	30-Nov-2009	1.67	\$84	n/a	\$84

**Notes for DELAYED costs**  
 Estimated costs to prepare and submit two overdue annual emissions inventories. The Date Required is the date that the first emissions inventory (for 2007) was due. The Final Date is the date the overdue reports were submitted.

**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**    \$1,000    **TOTAL**    \$84

Screening Date 18-Jun-2009

Docket No. 2009-1748-AIR-E

PCW

Respondent Kiewit Offshore Services, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 37629

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN102905064

Media [Statute] Air

Enf. Coordinator Terry Murphy

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 122.121 and Tex. Health & Safety Code §§ 382.054 and 382.085(b)

Violation Description Operated emission units at its Plant without a Federal Operating Permit ("FOP"), as documented during a record review conducted on October 26, 2009. Specifically, the Plant's actual emissions of xylene began to exceed the FOP threshold of ten tpy in October 2007, but the Respondent continued to operate without an FOP.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			25%

Matrix Notes: The Respondent failed to comply with 100% of the rule.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 596

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended.

Good Faith Efforts to Comply

	0.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

\$0

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Estimated EB Amount \$730

Statutory Limit Test

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

# Economic Benefit Worksheet

**Respondent** Kiewit Offshore Services, Ltd.  
**Case ID No.** 37629  
**Reg. Ent. Reference No.** RN102905064  
**Media** Air  
**Violation No.** 4

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

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

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$5,000	31-Oct-2007	1-Oct-2010	2.92	\$730	n/a	\$730
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated costs to prepare and submit a Title V permit application. The Date Required is the last day of the month in which the Respondent became subject to a Title V permit, and the Final Date is the date a Title V permit is expected to be issued.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$730

Screening Date 18-Jun-2009

Docket No. 2009-1748-AIR-E

PCW

Respondent Kiewit Offshore Services, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 37629

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102905064

Media [Statute] Air

Enf. Coordinator Terry Murphy

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 101.20(2), 40 Code of Federal Regulations § 63.3890, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to comply with NESHAP emissions limits, as documented during a record review conducted on October 26, 2009. Specifically, the Respondent became subject to the NESHAP emissions limits of ten tpy for xylene for surface coating of miscellaneous metal parts and products beginning October 2007, but has exceeded those limits, with a rolling average yearly emissions rate of 16.54 tons.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants not exceeding levels protective of human health or environmental receptors as a result of the violations.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 7 Number of violation days 553

Table for frequency: daily, weekly, monthly, quarterly (marked with x), semiannual, annual, single event.

Violation Base Penalty \$17,500

Seven quarterly events are recommended, from the last day of the month in which the Respondent became subject to the emissions limits (October 31, 2007) to the date the violations were disclosed (May 6, 2009).

Good Faith Efforts to Comply

Table for Good Faith Efforts: Reduction (0.0%), Before NOV, NOV to EDRP/Settlement Offer, Extraordinary, Ordinary, N/A (marked with x).

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

Violation Subtotal \$17,500

Economic Benefit (EB) for this violation

Estimated EB Amount \$1,419

Statutory Limit Test

Violation Final Penalty Total \$17,500

This violation Final Assessed Penalty (adjusted for limits) \$17,500

# Economic Benefit Worksheet

**Respondent** Kiewit Offshore Services, Ltd.  
**Case ID No.** 37629  
**Reg. Ent. Reference No.** RN102905064  
**Media** Air  
**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

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

**Delayed Costs**

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	\$5,000	31-Oct-2007	1-Sep-2010	2.84	\$710	n/a	\$710
Other (as needed)	\$5,000	31-Oct-2007	1-Sep-2010	2.84	\$710	n/a	\$710

Notes for DELAYED costs

Estimated costs to change to compliant materials, make equipment modifications, prepare and submit compliance demonstration documentation, and prepare and submit a request to amend the permit. The Date Required is the first compliance due date, and the Final Date is the date the Respondent is expected to achieve compliance.

**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

\$10,000

TOTAL

\$1,419

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN601081821 Kiewit Offshore Services, Ltd.	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN102905064 KIEWIT OFFSHORE SERVICES	Classification: HIGH	Site Rating: 0.00
ID Number(s):	AIR NEW SOURCE PERMITS	PERMIT	47227
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	SD0184W
	AIR NEW SOURCE PERMITS	REGISTRATION	74006
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXR000042648
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	86769
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	74333
	STORMWATER	PERMIT	TXR05V696
Location:	2440 KIEWITT RD, INGLESIDE, TX, 78362		
TCEQ Region:	REGION 14 - CORPUS CHRISTI		
Date Compliance History Prepared:	October 27, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 27, 2004 to October 27, 2009		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Terry Murphy	Phone:	(512) 239-5025

## 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: 9/1/2009 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.
 

N/A
- B. Any criminal convictions of the state of Texas and the federal government.
 

N/A
- C. Chronic excessive emissions events.
 

N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 

1	08/31/2005	(374083)
2	04/27/2006	(463550)
3	02/18/2007	(537626)
4	05/30/2007	(556461)
5	05/13/2009	(745089)
6	10/26/2009	(780420)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

N/A
- F. Environmental audits.
 

Notice of Intent Date: 05/28/2009 (759678)

No DOV Associated
- 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  
KIEWIT OFFSHORE  
SERVICES, LTD.  
RN102905064**

§  
§  
§  
§  
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§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2009-1748-AIR-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Kiewit Offshore Services, Ltd. ("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, represented by Timothy A. Wilkins of the law firm of Bracewell & Giuliani, LLP, appear before the Commission and together stipulate that:

1. The Respondent owns and operates an offshore platform fabrication plant at 2440 Kiewit Road in Ingleside, San Patricio County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 28, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Twenty-Nine Thousand Five Hundred Ninety Dollars (\$29,590) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Twenty-Three Thousand Six Hundred Seventy-Two Dollars (\$23,672) of the administrative penalty and Five Thousand Nine Hundred Eighteen Dollars (\$5,918) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent:
  - a. By November 6, 2009, began to produce and maintain a record of hazardous air pollutants ("HAP") twelve-month emissions rates; and
  - b. By November 30, 2009:
    - i. Submitted annual emissions inventories for the calendar years 2007 and 2008 to the TCEQ; and
    - ii. Submitted an initial Federal Operating Permit application to the TCEQ.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

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

1. Failed to fully satisfy record keeping requirements and to comply with National Emissions Standards for Hazardous Air Pollutants ("NESHAP") record keeping requirements, in violation of New Source Review Permit ("NSRP") No. 47227, Special Condition 5.B., 30 TEX. ADMIN. CODE §§ 101.20(2) and 116.115(c), 40 CODE OF FEDERAL REGULATIONS § 63.3930, and TEX. HEALTH

& SAFETY CODE § 382.085(b), as documented during a record review conducted on October 26, 2009. Specifically, the Respondent failed to produce and maintain, on file, a monthly report calculating tons per year ("tpy") of HAP emissions for the preceding 12 months.

2. Failed to comply with NESHAP notification requirements, in violation of 30 TEX. ADMIN. CODE § 101.20(2), 40 CODE OF FEDERAL REGULATIONS § 63.3910(b) and (c), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on October 26, 2009. Specifically, the Respondent has failed to submit an initial notification and a notification of compliance status relating to HAP emissions from surface coating of miscellaneous metal parts and products.
3. Failed to submit emissions inventories, in violation of 30 TEX. ADMIN. CODE § 101.10(a)(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on October 26, 2009. Specifically, in calendar years 2007 and 2008, the Plant emitted more than ten tpy of xylene, but the Respondent failed to submit an emissions inventory for those years.
4. Operated emission units at its Plant without a Federal Operating Permit ("FOP"), in violation of 30 TEX. ADMIN. CODE § 122.121 and TEX. HEALTH & SAFETY CODE §§ 382.054 and 382.085(b), as documented during a record review conducted on October 26, 2009. Specifically, the Plant's actual emissions of xylene began to exceed the FOP threshold of ten tpy in October 2007, but the Respondent continued to operate without an FOP.
5. Failed to comply with NESHAP emissions limits, in violation of 30 TEX. ADMIN. CODE § 101.20(2), 40 CODE OF FEDERAL REGULATIONS § 63.3890, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on October 26, 2009. Specifically, the Respondent became subject to the NESHAP emissions limits of ten tpy for xylene for surface coating of miscellaneous metal parts and products beginning October 2007, but has exceeded those limits, with a rolling average yearly emissions rate of 16.54 tons.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Kiewit Offshore Services, Ltd., Docket No. 2009-1748-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. It is further ordered that the Respondent shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete request to amend NSRP No. 47227, in order to establish limits on the Plant's xylene emissions and other relevant HAP emissions, in accordance with 30 TEX. ADMIN. CODE § 116.110(b) to:  

Air Permits Division, MC 163  
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 request to amend NSRP No. 47227 and the Federal Operating Permit application within 30 days after the date of such requests, or by any other deadline specified in writing;
  - c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a.;
  - d. Within 180 days after the effective date of this Agreed Order:
    - i. Submit written certification that either NSRP No. 47227 has been amended or that unauthorized emissions have ceased until such time that appropriate authorization is obtained;
    - ii. Certify compliance with the notification requirements of 40 CODE OF FEDERAL REGULATIONS § 63.3910; and
    - iii. Certify compliance with 40 CODE OF FEDERAL REGULATIONS § 63.3890;
  - e. Within 330 days after the effective date of this Agreed Order, certify compliance with Commission rules regarding authorization to operate a source of air emissions under the Operating Permits program or cease operations until appropriate authorization is obtained; and
  - f. The written certifications required by Ordering Provision Nos. 2.c., 2.d.i. through iii., and 2.e. shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my

inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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  
Corpus Christi Regional Office  
Texas Commission on Environmental Quality  
6300 Ocean Drive, Suite 1200  
Corpus Christi, Texas 78412-5503

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in 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.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

*Galen Sullivan*  
For the Executive Director

5/3/2010  
Date

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

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

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

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

*Fuat Sezer*  
Signature

March 24, 2010  
Date

FUAT SEZER  
Name (Printed or typed)  
Authorized Representative of  
Kiewit Offshore Services, Ltd.

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.

