

AET INC. LIMITED

RN105885180

Docket No. 2010-0703-AIR-E

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

**Media:**

AIR

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Sabine-Neches ship channel, north of the MLK bridge and immediately to the east of the port of Port Arthur, Jefferson County

**Type of Operation:**

Sour crude oil tanker

**Other Significant Matters:**

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: Mr. Hilton Kelley, with Community In-Power & Development Association Inc., has expressed an interest in this matter.

Interested Third-Parties: The complainant has expressed a desire to speak at Agenda.

**Texas Register Publication Date:** June 10, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$36,000

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** N/A

**Total Paid to General Revenue:** \$18,000

**Total Due to General Revenue:** \$0

**SEP Conditional Offset:** \$18,000

Name of SEP: City of Port Arthur-Building and Infrastructure Energy Efficiency Upgrades Program

**Compliance History Classifications:**

Person/CN – Not yet rated

Site/RN – Not yet rated

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

AET INC. LIMITED

RN105885180

Docket No. 2010-0703-AIR-E

***Investigation Information***

**Complaint Date(s):** January 23, 2010  
Complaint Information: Complaint alleged strong chemical odors due to a sour crude spill in the Neches-Sabine ship channel impacting the west side of Port Arthur.

**Date(s) of Investigation:** January 23, 2010 through January 27, 2010

**Date(s) of NOV(s):** N/A

**Date(s) of NOE(s):** April 22, 2010

***Violation Information***

Failed to prevent a condition of air pollution. Specifically, 11,500 barrels of sour crude oil was released into the Sabine-Neches channel, causing volatile organic compounds, hydrogen sulfide, and their associated odors to be emitted into the atmosphere. The Port Arthur Fire Department issued an evacuation notice for an area downwind of the spill. The Sabine-Neches Channel was reopened to marine traffic on January 27, 2010 [TEX. HEALTH & SAFETY CODE § 382.085(a) and (b)].

***Corrective Actions/Technical Requirements*****Corrective Action(s) Completed:**

1. By January 27, 2010, completed cleanup of the sour crude oil in the waters of the ship channel using booms, vacuum trucks and other water-borne assets;
2. By February 24, 2010, used high-volume, low-pressure water, snare booms and absorbent pads to complete the cleanup of the spilled oil from the shoreline; and
3. By May 18, 2010:
  - i. Updated the master-pilot and crew member standard operating procedures, including a formalized system for master-pilot feedback mechanisms, use of anchors in emergencies, and manning of the forward station by a bosun;
  - ii. Updated the training program for masters and crew members to include river passage simulations and bridge emergency control situations;
  - iii. Established procedures to use tugs south of Texaco Island; and
  - iv. Implemented a plan to re-position and alter the design of the bridge engine maneuvering control panel.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** September 29, 2010

**Date Answer(s) Filed:** October 19, 2010

**SOAH Referral Date:** November 29, 2010

**Hearing Date(s):**  
Preliminary hearing: January 27, 2011  
Evidentiary hearing: June 21, 2011

**Settlement Date:** May 5, 2011

**AET INC. LIMITED**

**RN105885180**

**Docket No. 2010-0703-AIR-E**

***Contact Information***

**TCEQ Attorneys:** Anna Treadwell, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ SEP Coordinator:** Sharon Blue, Litigation Division, (512) 239-2223

**TCEQ Enforcement Coordinator:** Heather Podlipny, Air Enforcement Section, (512) 239-2603

**TCEQ Regional Contact:** Kathryn Saucedo, Beaumont Regional Office, (409) 898-3838

**Respondent:** Richard Russell, Vice President of Operations, AET Inc. Limited, 1900 West Loop South, Suite 920, Houston, Texas 77027

**Respondent's Attorney:** Harless R. Benthul, Attorney, The Lyric Centre, 440 Louisiana, Suite 900, Houston, Texas 77002

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**Attachment A**  
**Docket Number: 2010-0703-AIR-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	AET Inc. Limited
<b>Penalty Amount:</b>	Thirty-Six Thousand Dollars (\$36,000)
<b>SEP Offset Amount:</b>	Eighteen Thousand Dollars (\$18,000)
<b>Type of SEP:</b>	Pre-approved
<b>Third-Party Recipient:</b>	City of Port Arthur
<b>Project Name:</b>	<i>Port Arthur Building and Infrastructure Energy Efficiency Upgrades Program</i>
<b>Location of SEP:</b>	Jefferson County

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

**1. Project Description**

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **City of Port Arthur** for the *Port Arthur Building and Infrastructure Energy Efficiency Upgrades Program*. The contribution will be used in accordance with the Supplemental Environmental Project agreement between the Third-Party Recipient and the TCEQ (the “Project”). The SEP Offset Amount shall be used to perform energy efficiency upgrades on public buildings and infrastructure. Specifically, the SEP Offset Amount may only be used for: 1) the cost of conducting energy efficiency audits; 2) the incremental cost for construction or implementation of energy-efficiency upgrades (versus the cost of non-energy efficiency upgrades); 3) the incremental cost of purchase of equipment or appliances that are more energy-efficient (versus the cost of purchasing non-energy efficient equipment or appliances); or 4) other direct costs authorized in advance and in writing by TCEQ.

For items 2, 3, and 4 above, the Third-Party Recipient shall submit a budget and proposals for expenditure to TCEQ for written approval prior to the use of the SEP Offset Amount. The Third-Party Recipient shall use the SEP Offset Amount to conduct energy efficiency audits on its buildings to prioritize implementation of energy efficiency projects.

The Third-Party Recipient shall submit the results of those audits along with any proposed modifications and associated budgets and proposal for expenditure to TCEQ.

Modifications may include but are not limited to weatherization, energy-reduction modifications such as building envelope upgrades (cool roofs, exterior shading, optimized insulation and air sealing), installation of high-efficiency lighting fixtures and occupancy sensors for both lighting and HVAC, high-efficiency demand-controlled ventilation and

energy-efficient boilers, more efficient exterior lighting and energy-efficient office equipment, replacing heating, ventilation, and cooling (HVAC) systems with more efficient boilers, motors, and variable-speed drives; reducing energy and maintenance costs by installing centralized energy management systems; lowering electric lighting and cooling loads and boosting productivity through increased use of day-lighting, installation of LED traffic lights, and use of renewable energy sources.

The Third-Party Recipient shall quantify the equipment benefit of each project and submit the results of those calculations to TCEQ within 90 days of completion of each project.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

Implementation of this project will reduce fuel and electricity usage for heating and cooling and other day-to-day operations. These reductions will reduce emissions of particulate matter ("PM"), volatile organic carbon ("VOC") compounds, nitrogen oxides ("NO<sub>x</sub>"), and other pollutants associated with the combustion of fuel and generation of electricity.

**C. Minimum Expenditure**

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

**2. Performance Schedule**

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

John Johnson, Esquire  
Carl Griffith & Associates, Inc.  
City of Port Arthur Energy Efficiency SEP  
2901 Turtle Creek Drive, Suite 445  
Port Arthur, Texas 77642

**3. Records and Reporting**

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

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-3087

#### 4. Failure to Fully Perform

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

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-3087

#### 5. Publicity

Any public statements concerning this SEP made by or on behalf of 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

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

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

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

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	26-Apr-2010		
	<b>PCW</b>	7-May-2010	<b>Screening</b>	4-May-2010
			<b>EPA Due</b>	

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	AET Inc. Limited		
<b>Reg. Ent. Ref. No.</b>	RN105885180		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	39614	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-0703-AIR-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Heather Podlipny
		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$40,000
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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.

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
<b>Notes</b>	No adjustments due to compliance history.		
<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>
<b>Notes</b>	The Respondent does not meet the culpability criteria.		
<b>Good Faith Effort to Comply Total Adjustments</b>		<b>Subtotal 5</b>	\$4,000
<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$266	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$16,223		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$36,000
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
	<b>Final Penalty Amount</b>
	\$36,000

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$36,000
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	No deferral is recommended for Findings Orders.
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<b>PAYABLE PENALTY</b>	\$36,000
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<b>Screening Date</b>	4-May-2010	<b>Docket No.</b>	2010-0703-AIR-E	<b>PCW</b>
<b>Respondent</b>	AET Inc. Limited			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	39614			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN105885180			
<b>Media [Statute]</b>	Air			
<b>Enf. Coordinator</b>	Heather Podlipny			

### Compliance History Worksheet

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

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

**Adjustment Percentage (Subtotal 2)** 0%

>> Repeat Violator (Subtotal 3)

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

>> Compliance History Person Classification (Subtotal 7)

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

>> Compliance History Summary

<b>Compliance History Notes</b>	No adjustments due to compliance history.
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**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

**Screening Date** 4-May-2010  
**Respondent** AET Inc. Limited  
**Case ID No.** 39614  
**Reg. Ent. Reference No.** RN105885180  
**Media [Statute]** Air  
**Enf. Coordinator** Heather Podlipny

**Docket No.** 2010-0703-AIR-E

**PCW**

*Policy Revision 2 (September 2002)*  
*PCW Revision October 30, 2008*

**Violation Number**

**Rule Cite(s)**

Tex. Health & Safety Code § 382.085(a) and (b)

**Violation Description**

Failed to prevent a condition of air pollution. Specifically, on January 23, 2010, the barge "Eagle Otome" released 11,500 barrels of sour crude oil into the Sabine-Neches channel, causing volatile organic compounds, hydrogen sulfide, and their associated odors to be emitted into the atmosphere. The Port Arthur Fire Department issued an evacuation notice for an area downwind of the spill on January 23, 2010. The Sabine-Neches channel was reopened to marine traffic on January 27, 2010.

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="100%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Human health or the environmental receptors were exposed to pollutants that exceeded levels protective of human health or environmental receptors as a result of the violation. Total air emissions from the sour crude spill was 870,000 pounds of volatile organic compounds, and the resulting air emissions exceeded Air Monitoring Comparison Values for odor and health effects.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text" value="x"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

Four daily events are recommended, based on the four days that the odorous conditions were documented and until the Sabine-Neches Ship Channel was reopened to marine traffic on January 27, 2010.

**Good Faith Efforts to Comply**

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text" value="x"/>
N/A	<input type="text"/>	(mark with x)

Notes: The Respondent completed corrective actions on May 18, 2010.

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

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

# Economic Benefit Worksheet

**Respondent** AET Inc. Limited  
**Case ID No.** 39614  
**Req. Ent. Reference No.** RN105885180  
**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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$1,623	23-Jan-2010	18-May-2010	0.32	\$2	\$34	\$36
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	\$14,600	23-Jan-2010	18-May-2010	0.32	\$230	n/a	\$230
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 institute tug escorts for the barges, and additional training for the vessel crew to emphasize inland navigation and bridge resource management. The Date Required is the date the incident began. The Final Date is the date the corrective actions for the spill cleanup were completed.

### 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

\$16,223

**TOTAL**

\$266

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603635699 AET Inc. Limited Classification: Rating:  
Regulated Entity: RN105885180 EAGLE OTOME SABINE-NECHES Classification: Site Rating:  
CANAL CRUDE SPILL

ID Number(s):

Location: Just north of the MLK bridge and immediately to the east of the port of Port Arthur, Texas in Port Arthur, Jefferson County, Texas

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: April 27, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 27, 2005 to April 27, 2010

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

Name: Heather Podlipny Phone: 239 - 2603

## 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

## Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, 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.)  
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A

Sites Outside of Texas

N/A

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
AET INC. LIMITED;  
RN105885180**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2010-0703-AIR-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding AET Inc. Limited ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Harless Benthul, presented this Agreed Order to the Commission.

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, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement 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 Respondent.

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

### **FINDINGS OF FACT**

1. Respondent owns a sour crude oil tanker operated in the Sabine-Neches ship channel located north of the MLK bridge and immediately to the east of the port of Port Arthur in Jefferson County, Texas (the "Site"). The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on January 23, 2010 through January 27, 2010, a TCEQ Beaumont Regional Office investigator documented that Respondent failed to prevent a condition of air pollution. Specifically, on January 23, 2010, the barge "Eagle Otome" released 11,500 barrels of sour crude oil into the Sabine-Neches channel, causing volatile organic compounds, hydrogen sulfide, and their associated odors to be emitted into the atmosphere. The Port Arthur Fire Department issued an

evacuation notice for an area downwind of the spill on January 23, 2010. The Sabine-Neches channel was reopened to marine traffic on January 27, 2010.

3. Respondent received notice of the violation on or about April 26, 2010.
4. The Executive Director recognizes that Respondent implemented the following corrective measures at the Site:
  - a. By January 27, 2010, completed cleanup of the sour crude oil in the waters of the ship channel using booms, vacuum trucks and other water-borne assets;
  - b. By February 24, 2010, used high-volume, low-pressure water, snare booms and absorbent pads to complete the cleanup of the spilled oil from the shoreline; and
  - c. By May 18, 2010:
    - i. Updated the master-pilot and crew member standard operating procedures, including a formalized system for master-pilot feedback mechanisms, use of anchors in emergencies, and manning of the forward station by a bosun;
    - ii. Updated the training program for masters and crew members to include river passage simulations and bridge emergency control situations;
    - iii. Established procedures to use tugs south of Texaco Island; and
    - iv. Implemented a plan to re-position and alter the design of the bridge engine maneuvering control panel.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent violated TEX. HEALTH & SAFETY CODE § 382.085(a) and (b), by failing to prevent a condition of air pollution.
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes 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 thirty six thousand dollars (\$36,000.00) 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. Pursuant to TEX. WATER CODE § 7.067, eighteen thousand dollars (\$18,000.00) of the administrative penalty shall be conditionally offset by Respondent's timely and satisfactory completion of a

Supplemental Environmental Project ("SEP") as defined in the SEP Agreement ("Attachment A" - incorporated herein by reference). Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed by this Agreed Order shall be discharged upon full compliance with all the terms and conditions of this Agreed Order, which includes timely and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director.

Respondent paid eighteen thousand dollars (\$18,000.00) dollars of the administrative penalty.

If Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the conditionally offset portion of the administrative penalty shall become immediately due and payable without demand or notice. The acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Agreed Order, and the Executive Director may require Respondent to pay all or part of the conditionally offset administrative penalty.

#### **ORDERING PROVISIONS**

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 4, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here.
2. Respondent shall implement and complete a SEP as set forth in Conclusion of Law No. 4, above. The amount of eighteen thousand dollars (\$18,000.00) of the assessed administrative penalty is conditionally offset based on the condition that Respondent implement and complete a SEP pursuant to the terms and conditions contained in the SEP Agreement, as defined in Attachment A. Respondent's obligation to pay the conditionally offset portion of the assessed administrative penalty shall be discharged upon full, final, and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director. Administrative penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment. Checks shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: AET Inc. Limited, Docket No. 2010-0703-AIR-E" to:

Litigation Division  
Texas Commission on Environmental Quality  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

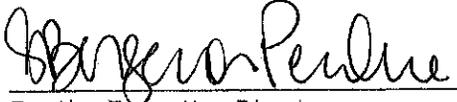
3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until 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, 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 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 may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

10. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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



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

7/11/2011

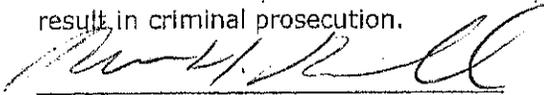
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of AET Inc. Limited, 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



\_\_\_\_\_  
Signature -Capt. Richard H. Russell  
V.P. Operations- Americas  
AET Inc. Limited

MAY 5, 2011

\_\_\_\_\_  
Date

**Attachment A**  
**Docket Number: 2010-0703-AIR-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	AET Inc. Limited
<b>Penalty Amount:</b>	Thirty-Six Thousand Dollars (\$36,000)
<b>SEP Offset Amount:</b>	Eighteen Thousand Dollars (\$18,000)
<b>Type of SEP:</b>	Pre-approved
<b>Third-Party Recipient:</b>	City of Port Arthur
<b>Project Name:</b>	<i>Port Arthur Building and Infrastructure Energy Efficiency Upgrades Program</i>
<b>Location of SEP:</b>	Jefferson County

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

**1. Project Description**

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **City of Port Arthur** for the *Port Arthur Building and Infrastructure Energy Efficiency Upgrades Program*. The contribution will be used in accordance with the Supplemental Environmental Project agreement between the Third-Party Recipient and the TCEQ (the "Project"). The SEP Offset Amount shall be used to perform energy efficiency upgrades on public buildings and infrastructure. Specifically, the SEP Offset Amount may only be used for: 1) the cost of conducting energy efficiency audits; 2) the incremental cost for construction or implementation of energy-efficiency upgrades (versus the cost of non-energy efficiency upgrades); 3) the incremental cost of purchase of equipment or appliances that are more energy-efficient (versus the cost of purchasing non-energy efficient equipment or appliances); or 4) other direct costs authorized in advance and in writing by TCEQ.

For items 2, 3, and 4 above, the Third-Party Recipient shall submit a budget and proposals for expenditure to TCEQ for written approval prior to the use of the SEP Offset Amount. The Third-Party Recipient shall use the SEP Offset Amount to conduct energy efficiency audits on its buildings to prioritize implementation of energy efficiency projects.

The Third-Party Recipient shall submit the results of those audits along with any proposed modifications and associated budgets and proposal for expenditure to TCEQ.

Modifications may include but are not limited to weatherization, energy-reduction modifications such as building envelope upgrades (cool roofs, exterior shading, optimized insulation and air sealing), installation of high-efficiency lighting fixtures and occupancy sensors for both lighting and HVAC, high-efficiency demand-controlled ventilation and

energy-efficient boilers, more efficient exterior lighting and energy-efficient office equipment, replacing heating, ventilation, and cooling (HVAC) systems with more efficient boilers, motors, and variable-speed drives; reducing energy and maintenance costs by installing centralized energy management systems; lowering electric lighting and cooling loads and boosting productivity through increased use of day-lighting, installation of LED traffic lights, and use of renewable energy sources.

The Third-Party Recipient shall quantify the equipment benefit of each project and submit the results of those calculations to TCEQ within 90 days of completion of each project.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

Implementation of this project will reduce fuel and electricity usage for heating and cooling and other day-to-day operations. These reductions will reduce emissions of particulate matter ("PM"), volatile organic carbon ("VOC") compounds, nitrogen oxides ("NO<sub>x</sub>"), and other pollutants associated with the combustion of fuel and generation of electricity.

**C. Minimum Expenditure**

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

**2. Performance Schedule**

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

John Johnson, Esquire  
Carl Griffith & Associates, Inc.  
City of Port Arthur Energy Efficiency SEP  
2901 Turtle Creek Drive, Suite 445  
Port Arthur, Texas 77642

**3. Records and Reporting**

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

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-3087

#### 4. Failure to Fully Perform

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

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-3087

#### 5. Publicity

Any public statements concerning this SEP made by or on behalf of 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

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

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

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