

Executive Summary – Enforcement Matter – Case No. 43096
JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas
RN102887270
Docket No. 2011-2250-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

No

Location(s) Where Violation(s) Occurred:

Nisseki Chemical Texas, 10500 Bay Area Boulevard, Pasadena, Harris County

Type of Operation:

Chemical plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: July 27, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$54,117

Amount Deferred for Expedited Settlement: \$10,823

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$21,647

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$21,647

Name of SEP: Texas Association of Resource Conservation and Development Areas –
Clean School Buses

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

**Executive Summary – Enforcement Matter – Case No. 43096
JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas
RN102887270
Docket No. 2011-2250-AIR-E**

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: August 17, 2011
Date(s) of NOE(s): November 18, 2011

Violation Information

Failed to conduct monthly sampling for volatile organic compounds (“VOC”) leakage from a cooling tower, Emission Point Number (“EPN”) CT-4. Specifically, monthly sampling for VOC leakage from heat exchangers was required beginning May 15, 2007 [30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), Federal Operating Permit No. O3068 Special Terms and Conditions No. 11, New Source Review Permit No. 19624 Special Conditions No. 16, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

On August 17, 2011, Respondent began conducting monthly sampling for VOC leakage from the cooling tower, EPN CT-4.

Technical Requirements:

The Order will require Respondent to implement and complete a Supplemental Environmental Project (“SEP”). (See SEP Attachment A)

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: James Nolan, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-6634; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

Executive Summary – Enforcement Matter – Case No. 43096
JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas
RN102887270
Docket No. 2011-2250-AIR-E

Respondent: Webster Draughon, Vice President, JX Nippon Chemical Texas Inc.,
10500 Bay Area Boulevard, Pasadena, Texas 77507

Respondent's Attorney: Robert A. Davee, Mills Shirley L.L.P., 17225 El Camino Real,
Suite 450, Houston, Texas 77058

Attachment A
Docket Number: 2011-2250-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas
Payable Penalty Amount:	Forty-Three Thousand Two Hundred Ninety-Four Dollars (\$43,294)
SEP Amount:	Twenty-One Thousand Six Hundred Forty-Seven Dollars (\$21,647)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses
Location of SEP:	Texas Air Quality Control Region 216 – Houston - Galveston

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

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to aid local school districts, area transit agencies, and local governments in need of funding assistance to pay for the cost of the following activities to reduce emissions: 1) replacing older diesel buses with alternative fuelled or clean diesel buses; or 2) retrofitting older diesel buses with new, cleaner technology. The funds will be disbursed on a needs-rated basis, using non-attainment area status, condition of buses, and economic status of the recipient as possible rating factors if competition for the funds exists. To maximize funds, retrofitting will take priority over replacement of buses. Older buses deemed not suitable for retrofitting will be permanently retired and sold only for scrap.

Acceptable retrofit technologies include particulate matter traps, diesel particulate matter filters, nitrogen oxides (NO_x) reduction catalyst technology in combination with

JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas
Agreed Order - Attachment A

diesel particulate filters, and other emission control technologies that are developed and approved by the United States Environmental Protection Agency ("EPA") or the California Air Resources Board. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project.

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 matter and hydrocarbon emissions from buses, to meet the new, more stringent emissions standards introduced by the EPA which was phased in between 2007 and 2010.

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:

Texas Association of Resource Conservation and Development Areas, Inc.
Attention: Ken Awtrey
P.O. Box 635067
Nacogdoches, Texas 75961

3. Records and Reporting

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

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

4. Failure to Fully Perform

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

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

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

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

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	21-Nov-2011	Screening	6-Dec-2011	EPA Due	
	PCW	28-Feb-2012				

RESPONDENT/FACILITY INFORMATION			
Respondent	JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas		
Reg. Ent. Ref. No.	RN102887270		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	43096	No. of Violations	1
Docket No.	2011-2250-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Miriam Hall
		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	\$5,237
Approx. Cost of Compliance	\$4,160

*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 6-Dec-2011

Docket No. 2011-2250-AIR-E

PCW

Respondent JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas

Policy Revision 2 (September 2002)

Case ID No. 43096

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102887270

Media [Statute] Air

Enf. Coordinator Miriam Hall

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	7	14%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 19%

>> 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 for one NOV with same/similar violations and seven NOVs with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 19%

Screening Date 6-Dec-2011

Docket No. 2011-2250-AIR-E

PCW

Respondent JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas

Policy Revision 2 (September 2002)

Case ID No. 43096

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102887270

Media [Statute] Air

Enf. Coordinator Miriam Hall

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), Federal Operating Permit No. O3068 Special Terms and Conditions No. 11, New Source Review Permit No. 19624 Special Conditions No. 16, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to conduct monthly sampling for volatile organic compounds ("VOC") leakage from a cooling tower, Emission Point Number ("EPN") CT-4. Specifically, monthly sampling for VOC leakage from heat exchangers was required beginning May 15, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				10%
	Potential			X	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 52 1555 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$52,000

Fifty-two single events are recommended for the monthly monitoring periods beginning May 15, 2007 and ending August 17, 2011.

Good Faith Efforts to Comply

25.0% Reduction

\$13,000

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

Notes The Respondent returned to compliance on August 17, 2011 and the NOE is dated November 18, 2011.

Violation Subtotal \$39,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5,237

Violation Final Penalty Total \$54,117

This violation Final Assessed Penalty (adjusted for limits) \$54,117

Economic Benefit Worksheet

Respondent JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas
Case ID No. 43096
Reg. Ent. Reference No. RN102887270
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)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$4,160	15-May-2007	17-Aug-2011	5.18	\$1,077	\$4,160	\$5,237
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated costs to monitor EPN CT-4 for VOC leakages (\$80 per month for 52 months). The Date Required is the date when monitoring should have begun and the Final Date is the date the first monitoring was completed.

Approx. Cost of Compliance

\$4,160

TOTAL

\$5,237

Compliance History

Customer/Respondent/Owner-Operator: CN600569701 JX Nippon Chemical Texas Inc. Classification: AVERAGE Rating: 1.61

Regulated Entity: RN102887270 NISSEKI CHEMICAL OF TEXAS Classification: AVERAGE Site Rating: 0.21

ID Number(s):

POLLUTION PREVENTION PLANNING	ID NUMBER	P01839
AIR NEW SOURCE PERMITS	PERMIT	19624
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HG3626Q
AIR NEW SOURCE PERMITS	AFS NUM	4820101289
AIR NEW SOURCE PERMITS	REGISTRATION	72263
INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXD988040796
INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION #	82920
	(SWR)	
WASTEWATER	PERMIT	WQ0004412000
WASTEWATER	EPA ID	TX0124818
AIR OPERATING PERMITS	ACCOUNT NUMBER	HG3626Q
AIR OPERATING PERMITS	PERMIT	3068
AIR OPERATING PERMITS	PERMIT	3068
STORMWATER	PERMIT	TXR05AJ13
AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	HG3626Q

Location: 10500 BAY AREA BOULEVARD, PASADENA, TEXAS, 77507

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: December 05, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 05, 2006 to December 05, 2011

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

Name: Allison Fischer Phone: (512) 239 - 2574

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: 9/1/2011 Repeat Violator: NO

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.)

1	12/29/2006	(552135)
2	08/27/2007	(571873)
3	09/28/2007	(572908)
4	02/09/2007	(589620)
5	03/08/2007	(589621)
6	04/09/2007	(589622)
7	05/11/2007	(589623)
8	06/11/2007	(589624)
9	07/09/2007	(589625)
10	08/06/2007	(589626)
11	01/18/2007	(589627)
12	09/05/2007	(605952)
13	10/08/2007	(605953)
14	11/16/2007	(607454)
15	11/01/2007	(633238)
16	12/10/2007	(633239)
17	01/10/2008	(633240)
18	05/27/2008	(640108)
19	02/04/2008	(677749)

20 03/06/2008 (677750)
 21 04/01/2008 (677751)
 22 05/02/2008 (696534)
 23 06/03/2008 (696535)
 24 09/09/2008 (718237)
 25 08/07/2008 (718238)
 26 09/09/2008 (718239)
 27 10/06/2008 (718240)
 28 11/07/2008 (718241)
 29 03/04/2009 (722802)
 30 01/05/2009 (733487)
 31 08/06/2009 (749757)
 32 02/11/2009 (756632)
 33 03/11/2009 (756633)
 34 04/08/2009 (756634)
 35 05/12/2009 (773548)
 36 06/03/2009 (773549)
 37 09/29/2009 (776666)
 38 02/10/2010 (791392)
 39 02/04/2010 (820873)
 40 07/16/2009 (820874)
 41 08/06/2009 (820875)
 42 09/09/2009 (820876)
 43 10/08/2009 (820877)
 44 11/06/2009 (820878)
 45 12/08/2009 (820879)
 46 01/12/2010 (820880)
 47 03/08/2010 (836577)
 48 04/08/2010 (836578)
 49 05/10/2010 (836579)
 50 06/10/2010 (848013)
 51 07/07/2010 (862454)
 52 08/11/2010 (869075)
 53 09/02/2010 (875934)
 54 01/06/2011 (880654)
 55 10/06/2010 (883516)
 56 11/17/2010 (889896)
 57 05/13/2011 (895519)
 58 05/19/2011 (896109)
 59 12/02/2010 (898300)
 60 05/19/2011 (899089)
 61 11/18/2011 (900102)
 62 05/19/2011 (900454)
 63 01/14/2011 (904155)
 64 06/09/2011 (906431)
 65 02/08/2011 (911026)
 66 03/08/2011 (918314)
 67 05/06/2011 (940034)
 68 08/18/2011 (943055)
 69 09/16/2011 (943267)
 70 06/02/2011 (947437)
 71 07/05/2011 (954690)
 72 10/03/2011 (961272)
 73 08/02/2011 (961273)
 74 11/01/2011 (964067)
 75 09/06/2011 (967391)

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

Date: 09/28/2007 (572908) CN600569701

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.5(b)
ELMR Page 2, Nos 1, 2, & 4 PERMIT

Description: Failure to conduct monitoring at the frequency required by the permit. A review of self-monitoring data revealed that samples were not collected and analyzed during the first week of October 2006, the first week of November 2006, and the first and second weeks of March 2007. Records revealed that discharges occurred at the outfall during these periods. Samples must be collected and analyzed at the frequency required by the permit.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)
MRR Page 4, No. 3b PERMIT

Description: Failure to provide self-monitoring records during the investigation.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)
ELMR Page 1, No. 3 PERMIT

Description: Failure to accurately report analytical results. A review of laboratory reports and discharge monitoring reports revealed that for oil and grease, zero (0) values were reported when the results were less than the detection limit. The detection limit is the lowest value that can be reported. A zero (0) may not be used. Begin reporting the detection limit values immediately.

Date: 02/29/2008 (677750) CN600569701
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 03/04/2009 (722802) CN600569701
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
EL&MR, P. 2, No. 2 PERMIT
Description: Failure to maintain compliance with the permit limits for pH.

Date: 07/31/2010 (869075) CN600569701
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2010 (883516) CN600569701
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 06/10/2011 (906431) CN600569701
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 101, SubChapter F 101.201(b)(1)(H)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THSC Chapter 382 382.085(b)
Special Term & Condition 2 OP
Description: Failure to include in the Final Report the authorization number and the authorized emissions limit. (CATEGORY C3 Violation)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 101, SubChapter F 101.201(b)(1)(G)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THSC Chapter 382 382.085(b)
Special Term & Condition 2 OP
Description: Failure to include in the Final Report the compound descriptive type of all individually listed air emissions. (CATEGORY C3 Violation)

Date: 09/16/2011 (943267) CN600569701
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 319, SubChapter A 319.11(a)
30 TAC Chapter 319, SubChapter A 319.11(b)
Description: Failed to properly collect oil and grease (O&G) samples.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
MRR, No. 7(c) PERMIT
Description: Failed to provide notification of any effluent violation which deviates from the permitted effluent limitation by more than 40%.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 319, SubChapter A 319.5(e)
DSPC, No. 1(b) PERMIT
MRR, No. 4 PERMIT
Description: Failed to accurately complete the discharge monitoring reports (DMRs).

Date: 11/18/2011 (900102)

CN600569701

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
30 TAC Chapter 122, SubChapter B 122.145(2)(C)
5C THSC Chapter 382 382.085(b)
General Terms and Conditions OP

Description: Failure to submit the semi-annual deviation report dated May 28, 2010 and December 2, 2010, within the required 30-day timeframe. The report dated May 28 was due on June 1, 2010 and the report dated December 2 was due on December 1, 2010. (CATEGORY B3 violation)

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 A 60.18(c)(3)(i)(B)(ii)
5C THSC Chapter 382 382.085(b)
Special Condition 7A PERMIT
Special Terms and Conditions 1A OP

Description: Failure to maintain a minimum net heating value of 300 Btu/scf, averaged over a one hour period, for the fuel-gas feed to the SAS Flare (EPN: FL-1) and the ENB Flare (EPN: FL-2). (CATEGORY B19.g.1)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 101, SubChapter F 101.211(b)(2)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THSC Chapter 382 382.085(b)
Standard Terms and Condition 2G OP

Description: Failure to record all required information in the final report for recordable maintenance, start-up, shut-down (MSS). [Category C3]

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
5C THSC Chapter 382 382.085(b)
Special Terms and Conditions 3(A)(iv)(1) OP
Special Terms and Conditions 3C(iii)(1) OP

Description: Failure to conduct quarterly visible emission observations of stationary vents. (CATEGORY B19.g.1)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
5C THSC Chapter 382 382.085(b)
General Terms and Conditions OP

Description: Failure to report one deviation in the deviation report for the period of November 3, 2009 through November 2, 2010. (Category B3)

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JX NIPPON CHEMICAL TEXAS
INC. DBA NISSEKI CHEMICAL
OF TEXAS
RN102887270**

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

**AGREED ORDER
DOCKET NO. 2011-2250-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 JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Robert A. Davee of the law firm of Mills Shirley L.L.P., appear before the Commission and together stipulate that:

1. The Respondent owns and operates a chemical plant at 10500 Bay Area Boulevard 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. 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 November 23, 2011.
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 Fifty-Four Thousand One Hundred Seventeen Dollars (\$54,117) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Twenty-One Thousand Six Hundred Forty-Seven Dollars (\$21,647) of the administrative penalty and Ten Thousand Eight Hundred Twenty-Three Dollars (\$10,823) 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. Twenty-One Thousand Six Hundred Forty-Seven Dollars (\$21,647) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").
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 on August 17, 2011, the Respondent began conducting monthly sampling for volatile organic compounds ("VOC") leakage from the cooling tower, Emission Point Number ("EPN") CT-4.
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 failed to conduct monthly sampling for VOC leakage from a cooling tower, EPN CT-4, in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), Federal Operating Permit No. O3068 Special Terms and Conditions No. 11, New Source Review Permit No. 19624 Special Conditions No. 16, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on August 17, 2011. Specifically, monthly sampling for VOC leakage from heat exchangers was required, beginning May 15, 2007.

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: JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas, Docket No. 2011-2250-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 I, Paragraph 6 above, Twenty-One Thousand Six Hundred Forty-Seven Dollars (\$21,647) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the 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 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.
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

Pam Danue J.
For the Executive Director

8/23/12
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.

W. Draughon
Signature

4/4/2012
Date

WEBSTER W. DRAUGHON
Name (Printed or typed)

VICE PRESIDENT
Title

Authorized Representative of
JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas

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: 2011-2250-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas
Payable Penalty Amount:	Forty-Three Thousand Two Hundred Ninety-Four Dollars (\$43,294)
SEP Amount:	Twenty-One Thousand Six Hundred Forty-Seven Dollars (\$21,647)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses
Location of SEP:	Texas Air Quality Control Region 216 – Houston - Galveston

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

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to aid local school districts, area transit agencies, and local governments in need of funding assistance to pay for the cost of the following activities to reduce emissions: 1) replacing older diesel buses with alternative fuelled or clean diesel buses; or 2) retrofitting older diesel buses with new, cleaner technology. The funds will be disbursed on a needs-rated basis, using non-attainment area status, condition of buses, and economic status of the recipient as possible rating factors if competition for the funds exists. To maximize funds, retrofitting will take priority over replacement of buses. Older buses deemed not suitable for retrofitting will be permanently retired and sold only for scrap.

Acceptable retrofit technologies include particulate matter traps, diesel particulate matter filters, nitrogen oxides (NO_x) reduction catalyst technology in combination with

JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas
Agreed Order - Attachment A

diesel particulate filters, and other emission control technologies that are developed and approved by the United States Environmental Protection Agency ("EPA") or the California Air Resources Board. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project.

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 matter and hydrocarbon emissions from buses, to meet the new, more stringent emissions standards introduced by the EPA which was phased in between 2007 and 2010.

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:

Texas Association of Resource Conservation and Development Areas, Inc.
Attention: Ken Awtrey
P.O. Box 635067
Nacogdoches, Texas 75961

3. Records and Reporting

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

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

4. Failure to Fully Perform

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

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

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

The Respondent shall also mail a copy of the check to the Enforcement Division 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.