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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-1895-AIR-E TCEQ ID: RN100640283 CASE NO.: 40749
RESPONDENT NAME: KMTEX Properties, Inc.

ORDER TYPE:		
<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	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: KMTEX Properties, Inc., 2450 Gulfway Drive, Port Arthur, Jefferson County</p> <p>TYPE OF OPERATION: Chemical processing and storage facility</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: Five complaints were received on September 7, 8, and 13, 2010 alleging foul odors were emanating from the KMTEX properties. There is one additional pending enforcement action regarding this facility location, Docket No. 2010-1522-IHW-E.</p> <p>INTERESTED PARTIES: Complaints were received, but the complainants have not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 21, 2011. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Audra Benoit, Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8799; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. David Spacek, Plant Manager, KMTEX Properties, Inc., 2450 Gulfway Drive, Port Arthur, Texas 77640 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: September 7, 8, and 13, 2010</p> <p>Date of Investigation Relating to this Case: September 7, 2010</p> <p>Date of NOV/NOE Relating to this Case: November 3, 2010 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>AIR</p> <p>Failed to prevent unauthorized emissions. Specifically, Incident No. 144579 occurred September 7, 2010, when a metal fitting on a line cracked, causing a loss of pressure from Tank 606 which stores phenolic caustic with mercaptans, releasing 0.001 pounds of unauthorized volatile organic compounds into the atmosphere for three hours. Since the emissions event could have been avoided by better operational and/or maintenance practices and TCEQ Investigators documented health effects, including nausea, sore throat and headaches on-site as well as off-site while conducting a Visible Emissions and Odors Survey, and while speaking to a complainant, the demonstrations in 30 TEX. ADMIN. CODE § 101.222 necessary to present an affirmative defense were not met [30 TEX. ADMIN. CODE §§ 101.4 and 106.476, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$5,550</p> <p>Total Deferred: \$1,110 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$4,440</p> <p>Compliance History Classifications: Person/CN - Average Site/RN - Average</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent, on September 10, 2010 and in response to Incident No. 144579, replaced the cracked line with stainless steel braided flexible line on Tank 606 to ensure against recurrence of emissions events due to the same cause.</p>

Additional ID No(s): Air Account JE0318G



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	8-Nov-2010	Screening	8-Nov-2010	EPA Due	5-Aug-2010
	PCW	1-Dec-2010				

RESPONDENT/FACILITY INFORMATION

Respondent	KMTEX Properties, Inc.	
Reg. Ent. Ref. No.	RN100640283	
Facility/Site Region	10-Beaumont	Major/Minor Source Major

CASE INFORMATION

Enf./Case ID No.	40749	No. of Violations	1
Docket No.	2010-1895-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Audra Benoit
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 5
Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$5,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **36.0%** Enhancement **Subtotals 2, 3, & 7** **\$1,800**

Notes: Enhancement for one same/similar NOV, three dissimilar NOVs and one order without denial of liability.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$1,250**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts **\$1**
 Approx. Cost of Compliance **\$1,500**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$5,550**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$5,550**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$5,550**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$1,110**

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

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$4,440**

Screening Date 8-Nov-2010

Docket No. 2010-1895-AIR-E

PCW

Respondent KMTEX Properties, Inc.

Policy Revision 2 (September 2002)

Case ID No. 40749

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100640283

Media [Statute] Air

Enf. Coordinator Audra Benoit

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	3	6%
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	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<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%

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) 36%

>> 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 same/similar NOV, three dissimilar NOVs and one order without denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 36%

Screening Date 8-Nov-2010

Docket No. 2010-1895-AIR-E

PCW

Respondent KMTEX Properties, Inc.

Policy Revision 2 (September 2002)

Case ID No. 40749

PCW Revision October 30, 2003

Reg. Ent. Reference No. RN100640283

Media [Statute] Air

Enf. Coordinator Audra Benoit

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 101.4 and 106.476, and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to prevent unauthorized emissions. Specifically, Incident No. 144579 occurred September 7, 2010, when a metal fitting on a line cracked, causing a loss of pressure from Tank 606 which stores phenolic caustic with mercaptans, releasing 0.001 pounds of unauthorized volatile organic compounds into the atmosphere for three hours. Since the emissions event could have been avoided by better operational and/or maintenance practices and TCEQ Investigators documented health effects, including nausea, sore throat and headaches on-site as well as off-site while conducting a Visible Emissions and Odors Survey, and while speaking to a complainant, the demonstrations in 30 Tex. Admin. Code § 101.222 necessary to present an affirmative defense were not met.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment in the Beaumont-Port Arthur non-attainment area has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1 Number of violation days 1

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

One monthly event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$1,250

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

Notes The Respondent completed corrective actions for this violation on September 10, 2010, prior to the November 3, 2010 NOE.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$5,550

This violation Final Assessed Penalty (adjusted for limits) \$5,550

Economic Benefit Worksheet

Respondent KMTEX Properties, Inc.
Case ID No. 40749
Reg. Ent. Reference No. RN100640283
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)	\$1,500	7-Sep-2010	10-Sep-2010	0.01	\$0	\$1	\$1
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

Estimated costs to replace the cracked line with stainless steel braided flexible line on Tank 606 to ensure against the recurrence of emissions events due to the same cause. The date required is the date of the emissions event. The final date is the date compliance was achieved.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$1

Compliance History

Customer/Respondent/Owner-Operator: CN600350730 KMTEX Properties, Inc. Classification: AVERAGE Rating: 8.43
 Regulated Entity: RN100640283 KMTEX PROPERTIES Classification: AVERAGE Site Rating: 8.43

WQ0003544000

ID Number(s):	WASTEWATER	PERMIT	
	WASTEWATER	EPA ID	TX0116360
	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXD988076295
	INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION # (SWR)	23491
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	JE0318G
	AIR NEW SOURCE PERMITS	REGISTRATION	52979
	AIR NEW SOURCE PERMITS	REGISTRATION	54163
	AIR NEW SOURCE PERMITS	REGISTRATION	27124
	AIR NEW SOURCE PERMITS	REGISTRATION	28093
	AIR NEW SOURCE PERMITS	REGISTRATION	27044
	AIR NEW SOURCE PERMITS	REGISTRATION	29424
	AIR NEW SOURCE PERMITS	REGISTRATION	35855
	AIR NEW SOURCE PERMITS	REGISTRATION	36283
	AIR NEW SOURCE PERMITS	REGISTRATION	42822
	AIR NEW SOURCE PERMITS	REGISTRATION	44079
	AIR NEW SOURCE PERMITS	REGISTRATION	44660
	AIR NEW SOURCE PERMITS	REGISTRATION	44661
	AIR NEW SOURCE PERMITS	REGISTRATION	44813
	AIR NEW SOURCE PERMITS	REGISTRATION	44947
	AIR NEW SOURCE PERMITS	REGISTRATION	55945
	AIR NEW SOURCE PERMITS	REGISTRATION	56338
	AIR NEW SOURCE PERMITS	REGISTRATION	72245
	AIR NEW SOURCE PERMITS	PERMIT	74398
	AIR NEW SOURCE PERMITS	AFS NUM	4824500720
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	JE0318G

Location: 2450 GULFWAY DR, PORT ARTHUR, TX, 77640

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: December 15, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 08, 2005 to November 08, 2010

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

Name: Audra Benoit Phone: (409) 899-8799

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes

2. Has there been a (known) change in ownership/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: 9/1/2010 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.

Effective Date: 01/26/2007

ADMINORDER 2006-1048-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.1(4)

30 TAC Chapter 116, SubChapter B 116.115(c)

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

Rqmt Prov: 74398/ SC 1 PERMIT

Description: Nuisance conditions were documented during a complaint investigation conducted on May

26, 2005. Additionally failure to maintain emissions below the allowable limit.

Classification: Minor

Citation: 30 TAC Chapter 101, SubChapter F 101.201(a)(1)(A)

30 TAC Chapter 101, SubChapter F 101.201(a)(1)(B)

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

Description: Failed to properly submit a reportable event.

- 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. (CCEDES Inv. Track. No.)

- | | | |
|----|------------|----------|
| 1 | 04/03/2006 | (453598) |
| 2 | 05/25/2006 | (464791) |
| 3 | 08/31/2006 | (481980) |
| 4 | 07/21/2006 | (486518) |
| 5 | 07/25/2006 | (488602) |
| 6 | 11/15/2006 | (515905) |
| 7 | 02/23/2007 | (536266) |
| 8 | 02/13/2007 | (537379) |
| 9 | 05/22/2007 | (560103) |
| 10 | 09/21/2007 | (570146) |
| 11 | 11/05/2007 | (595778) |
| 12 | 11/16/2007 | (600484) |

13 01/22/2008 (614802)

14 07/10/2008 (685530)

15 10/13/2009 (767613)

16 08/23/2010 (794982)

17 06/17/2010 (798074)

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

Date: 04/03/2006 (453598)CN600350730
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(B)
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(1)(ii)
Description: The company failed to document daily inspection of the hazardous waste storage tank.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)
30 TAC Chapter 335, SubChapter A 335.6(c)(5)(B)
Description: The company failed to notify the commission regarding the status of tank nos. 165, 175 & 176.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter O 335.431(c)
40 CFR Chapter 268, SubChapter I, PT 268, SubPT A 268.7(a)(4)
Description: Failure to notify disposal facility in accordance with 40 CFR 268.7(b)(4).

Date: 02/23/2007 (536266) CN600350730
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 335, SubChapter A 335.10(b)
Description: The facility failed to designate a disposal facility and site address on Manifest # 001337507 JJK.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 335, SubChapter C 335.62
40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11(c)(1)
Description: Failure to conduct a representative hazardous waste determination.

Date: 07/10/2008 (685530) CN600350730
Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
Description: Failure to prevent an unauthorized discharge into waters of the State. Except as authorized by a rule, permit, or order issued by the commission, no person may discharge industrial waste into or adjacent to waters of the state.

Date: 06/18/2010 (798074)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 106, SubChapter A 106.4(c)
30 TAC Chapter 106, SubChapter T 106.454(1)(B)
30 TAC Chapter 115, SubChapter E 115.412(1)(F)(i)
5C THSC Chapter 382 382.085(b)
Description: Failure to store used solvent from the degreaser in a covered container.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter F 101.201(b)
30 TAC Chapter 101, SubChapter F 101.201(c)
30 TAC Chapter 116, SubChapter B 116.115(b)(2)
5C THSC Chapter 382 382.085(b)
General Condition 10 PERMIT
Description: Failure to properly report an emissions event.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)

30 TAC Chapter 115, SubChapter D 115.352(4)
30 TAC Chapter 116, SubChapter B 116.115(c)
40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.482-6(a)(1)
5C THSC Chapter 382 382.085(b)
Special Condition 2 PERMIT
Special Condition 8 PERMIT

Description: Failure to equip open-ended lines (OELs) with a cap, blind flange, plug, or a second valve.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)
30 TAC Chapter 116, SubChapter B 116.115(c)
40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.482-2(a)(1)
5C THSC Chapter 382 382.085(b)
Special Condition 2 PERMIT

Description: Failure to perform monthly monitoring of pumps.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)
30 TAC Chapter 116, SubChapter B 116.115(b)(2)(A)
5C THSC Chapter 382 382.085(b)
General Condition 3 PERMIT
General Condition 4 PERMIT

Description: Failure to provide notifications associated with construction and initial start-up of units as required by NSR 74398.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)
30 TAC Chapter 116, SubChapter B 116.115(c)
40 CFR Chapter 60, SubChapter C, PT 60, SubPT A 60.7(a)
5C THSC Chapter 382 382.085(b)
Special Condition 2 PERMIT

Description: Failure to provide notifications associated with construction and initial start-up of units as required by 40 CFR Part 60, Subpart A.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)
30 TAC Chapter 116, SubChapter B 116.115(c)
40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.482-6(e)
5C THSC Chapter 382 382.085(b)
Special Condition 2 PERMIT

Description: Failure to record in a log the background level measured during each compliance test.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)
30 TAC Chapter 116, SubChapter B 116.115(c)
40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.482-7(a)(2)
40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.483-2(b)(1)
5C THSC Chapter 382 382.085(b)
Special Condition 2 PERMIT

Description: Failure to perform initial monitoring of valves within 90 days at Column 501 and Tank 610.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)
30 TAC Chapter 116, SubChapter B 116.115(c)
40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.483-2(a)(1)
40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.483-2(b)(3)
5C THSC Chapter 382 382.085(b)
Special Condition 2 PERMIT

Description: Failure to monitor valves on an annual basis.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)
5C THSC Chapter 382 382.085(b)
General Condition 8 PERMIT
Special Condition 1 PERMIT

Description: Failure to prevent unauthorized emissions.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 106, SubChapter U 106.472(9)
30 TAC Chapter 116, SubChapter B 116.110(a)
5C THSC Chapter 382 382.085(b)

Description: Failure to obtain a permit or meet the conditions of a permit by rule (PBR).

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
KMTEX PROPERTIES, INC.
RN100640283

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

AGREED ORDER
DOCKET NO. 2010-1895-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 KMTEX Properties, Inc. ("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 appear before the Commission and together stipulate that:

1. The Respondent owns and operates a chemical processing and storage facility at 2450 Gulfway Drive in Port Arthur, Jefferson 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 8, 2010.
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 Five Thousand Five Hundred Fifty Dollars (\$5,550) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Four Hundred Forty Dollars (\$4,440) of the administrative penalty and One Thousand One Hundred Ten Dollars (\$1,110) 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, on September 10, 2010 and in response to Incident No. 144579, replaced the cracked line with stainless steel braided flexible line on Tank 606 to ensure against recurrence of emissions events due to the same cause.
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 prevent unauthorized emissions, in violation of 30 TEX. ADMIN. CODE §§ 101.4 and 106.476, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on September 7, 2010. Specifically, Incident No. 144579 occurred September 7, 2010, when a metal fitting on a line cracked, causing a loss of pressure from Tank 606 which stores phenolic caustic with mercaptans, releasing 0.001 pounds of unauthorized volatile organic compounds into the atmosphere for three hours. Since the emissions event could have been avoided by better operational and/or maintenance practices and TCEQ Investigators documented health effects, including nausea, sore throat and headaches on-site as well as off-site while conducting a Visible Emissions and Odors Survey, and while speaking to a complainant, the demonstrations in 30 TEX. ADMIN. CODE § 101.222 necessary to present an affirmative defense were not met.

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: KMTEX Properties, Inc. ("the Respondent") Docket No. 2010-1895-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 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.
3. 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.
4. 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.

KMTEX Properties, Inc.

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5. 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



For the Executive Director

2/3/12

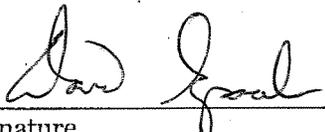
Date

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.



Signature

12/30/10

Date

David Spacek

Name (Printed or typed)
Authorized Representative of
KMTEX Properties, Inc.

Plant Manager

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.