

**Executive Summary – Enforcement Matter – Case No. 48830  
Lufkin Creosoting Co., Inc.  
RN101638906  
Docket No. 2014-0834-AIR-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

AIR

**Small Business:**

Yes

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

Lufkin Creosoting, 5865 South United States Highway 69, Lufkin, Angelina County

**Type of Operation:**

Wood treatment plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: Yes, Docket No.: 2013-0993-IHW-E

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** November 28, 2014

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$14,400

**Amount Deferred for Expedited Settlement:** \$2,880

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$5,760

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

Payment Plan: N/A

**SEP Conditional Offset:** \$5,760

Name of SEP: Railroad Commission of Texas (Third-Party Pre-Approved)

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 48830**  
**Lufkin Creosoting Co., Inc.**  
**RN101638906**  
**Docket No. 2014-0834-AIR-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** June 21, 2013  
**Date(s) of NOE(s):** July 19, 2013

***Violation Information***

Failed to obtain authorization for sources of air emissions. Specifically, the construction and emissions from Working Tank Nos. 1 and 2, the operation and emissions from the Vacuum Return Tank, and the creosote loading/unloading operations were not properly authorized under New Source Review (“NSR”) No. 8262. The Respondent operated the working tanks that are covered by conical shaped roofs raised approximately 8 inches above the tank walls around their perimeter containing hot creosote and the Vacuum Return Tank that is an open topped tank containing creosote laden water and conducted creosote loading/unloading operations from the tanker truck to the storage tanks and from the Treatment Cylinders to the storage tanks prior to obtaining the proper authorization [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

On December 30, 2013, the Respondent submitted a renewal and amendment application for NSR Permit No. 8262 to authorize the emissions associated with Working Tank Nos. 1 and 2, the Vacuum Return Tank, and the creosote loading/unloading operations.

**Technical Requirements:**

1. The Order will require the Respondent to implement and complete a Supplemental Environmental Project (“SEP”). (See Attachment A)
2. The Order will also require the Respondent to:
  - a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit renewal and amendment application within 30 days after the date of such requests, or by any other deadline specified in writing; and
  - b. Within 180 days, submit written certification that a permit renewal and amendment has been obtained or that operation has ceased until such time that appropriate authorization is obtained.

**Executive Summary – Enforcement Matter – Case No. 48830**  
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***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:** Amancio R. Gutierrez, Enforcement Division, Enforcement Team 5, MC 149, (512) 239-3921; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456  
**TCEQ SEP Coordinator:** Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565  
**Respondent:** Danny Vines, Vice President, Lufkin Creosoting Co., Inc., P.O. Box 1207, Lufkin, Texas 75902  
**Respondent's Attorney:** N/A



**Attachment A**  
**Docket Number: 2014-0834-AIR-E**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>Lufkin Creosoting Co., Inc.</b>
<b>Penalty Amount:</b>	<b>Eleven Thousand Five Hundred Twenty Dollars (\$11,520)</b>
<b>SEP Offset Amount:</b>	<b>Five Thousand Seven Hundred Sixty Dollars (\$5,760)</b>
<b>Type of SEP:</b>	<b>Contribution to a Third-Party Pre-Approved SEP</b>
<b>Third-Party Administrator:</b>	<b>Railroad Commission of Texas</b>
<b>Project Name:</b>	<b><i>Alternative Fuels Clean School Bus Replacement Program</i></b>
<b>Location of SEP:</b>	<b>Statewide, Preference for Angelina County</b>

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 SEP Offset Amount is set forth above and such offset 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 the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Railroad Commission of Texas** for the *Alternative Fuels Clean School Bus Replacement Program*. The contribution will be used in accordance with the SEP between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the contribution will be used to reduce nitrogen oxides, volatile organic compounds, carbon monoxide, and particulate matter emissions by replacing older diesel buses with newer buses that meet more stringent emission standards.

The Third-Party Administrator shall use the SEP Offset Amount for up to 100% of the purchase price of a propane or natural gas powered school bus that is model year 2010 or newer to public school districts and public charter schools to replace a diesel school bus that is model year 2002 or older. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used for the direct cost of implementing the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director (“ED”), be applied to another pre-approved SEP.

The 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. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

This SEP will directly benefit air quality by reducing harmful exhaust emissions which contribute to the formation of ozone and may cause or exacerbate a number of respiratory diseases, including asthma. In addition, by encouraging less school bus idling, this SEP contributes to public awareness of environmental matters.

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator 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 Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **Railroad Commission of Texas SEP** and shall mail the contribution with a copy of the Agreed Order to:

Alternative Energy Division  
Railroad Commission of Texas  
P.O. Box 12967  
Austin, Texas 78711-2967

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset 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 Offset Amount due to the Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

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

#### 4. **Failure to Fully Perform**

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP; 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  
P.O. Box 13087  
Austin, Texas 78711-3087

#### 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 Offset Amount identified in this Agreed Order has not been, and shall not be, included as a 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

<b>DATES</b>	<b>Assigned</b>	28-May-2014	<b>Screening</b>	11-Jun-2014	<b>EPA Due</b>	
	<b>PCW</b>	11-Jun-2014				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Lufkin Creosoting Co., Inc.		
<b>Reg. Ent. Ref. No.</b>	RN101638906		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	48830	<b>No. of Violations</b>	1
<b>Docket No.</b>	2014-0834-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Amancio R. Gutierrez
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$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	\$3,285
Estimated Cost of Compliance	\$10,000

\*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** 11-Jun-2014

**Docket No.** 2014-0834-AIR-E

**PCW**

**Respondent** Lufkin Creosoting Co., Inc.

Policy Revision 2 (September 2002)

**Case ID No.** 48830

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN101638906

**Media [Statute]** Air

**Enf. Coordinator** Amancio R. Gutierrez

**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> )	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> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	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 judgments 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)** 20%

>> **Repeat Violator (Subtotal 3)**

No

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

>> **Compliance History Person Classification (Subtotal 7)**

Satisfactory Performer

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

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for one order containing a denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 20%

**Screening Date** 11-Jun-2014  
**Respondent** Lufkin Creosoting Co., Inc.  
**Case ID No.** 48830  
**Reg. Ent. Reference No.** RN101638906  
**Media [Statute]** Air  
**Enf. Coordinator** Amancio R. Gutierrez

**Docket No.** 2014-0834-AIR-E

**PCW**

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)

**Violation Description**  
 Failed to obtain authorization for sources of air emissions. Specifically, the construction and emissions from Working Tank Nos. 1 and 2, the operation and emissions from the Vacuum Return Tank, and the creosote loading/unloading operations were not properly authorized under New Source Review Permit No. 8262. The Respondent operated the working tanks that are covered by conical shaped roofs raised approximately 8 inches above the tank walls around their perimeter containing hot creosote and the Vacuum Return Tank that is an open topped tank containing creosote laden water and conducted creosote loading/unloading operations from the tanker truck to the storage tanks and from the Treatment Cylinders to the storage tanks prior to obtaining the proper authorization.

**Base Penalty** \$10,000

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

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
Potential					

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
	X			10%

**Matrix Notes** 100% of the rule requirement was not met.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 12 Number of violation days 355

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

**Violation Base Penalty** \$12,000

Twelve monthly events are recommended from the June 21, 2013 investigation date to the June 11, 2014 screening date.

**Good Faith Efforts to Comply**

0.0%

Reduction \$0

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

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

**Violation Subtotal** \$12,000

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

**Statutory Limit Test**

**Estimated EB Amount** \$3,285

**Violation Final Penalty Total** \$14,400

**This violation Final Assessed Penalty (adjusted for limits)** \$14,400

## Economic Benefit Worksheet

**Respondent** Lufkin Creosoting Co., Inc.  
**Case ID No.** 48830  
**Reg. Ent. Reference No.** RN101638906  
**Media** Air  
**Violation No.** 1

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

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

### Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$10,000	2-Dec-2008	27-Jun-2015	6.57	\$3,285	n/a	\$3,285
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a permit amendment. The Date Required is the date of the initial permit application and the Final Date is the estimated date of compliance.

### Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$3,285



# Compliance History Report

**PUBLISHED** Compliance History Report for CN600880728, RN101638906, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

<b>Customer, Respondent, or Owner/Operator:</b>	CN600880728, Lufkin Creosoting Co., Inc.	<b>Classification:</b> SATISFACTORY	<b>Rating:</b> 4.60
<b>Regulated Entity:</b>	RN101638906, LUFKIN CREOSOTING	<b>Classification:</b> SATISFACTORY	<b>Rating:</b> 4.60
<b>Complexity Points:</b>	9	<b>Repeat Violator:</b> NO	
<b>CH Group:</b>	14 - Other		
<b>Location:</b>	5865 S US HIGHWAY 69 LUFKIN, TX 75901-2170, ANGELINA COUNTY		
<b>TCEQ Region:</b>	REGION 10 - BEAUMONT		

<b>ID Number(s):</b>	<b>INDUSTRIAL AND HAZARDOUS WASTE SOLID WASTE</b>	<b>INDUSTRIAL AND HAZARDOUS WASTE EPA ID</b>
	REGISTRATION # (SWR) 31832	TXD008063661
	<b>POLLUTION PREVENTION PLANNING ID NUMBER P03637</b>	<b>PETROLEUM STORAGE TANK REGISTRATION</b>
		4284
<b>AIR NEW SOURCE PERMITS PERMIT 8262</b>		<b>AIR NEW SOURCE PERMITS PERMIT 8264</b>
<b>AIR NEW SOURCE PERMITS ACCOUNT NUMBER AC0014H</b>		<b>AIR NEW SOURCE PERMITS AFS NUM 4800500013</b>
<b>STORMWATER PERMIT TXR05L956</b>		<b>IHW CORRECTIVE ACTION ID NUMBER T1667</b>

**Compliance History Period:** September 01, 2008 to August 31, 2013      **Rating Year:** 2013      **Rating Date:** 09/01/2013

**Date Compliance History Report Prepared:** June 11, 2014

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** June 11, 2009 to June 11, 2014

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Amancio R. Gutierrez      **Phone:** (512) 239-3921

**Site and Owner/Operator History:**

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

**Components (Multimedia) for the Site Are Listed in Sections A - J**

**A. Final Orders, court judgments, and consent decrees:**

- 1      Effective Date: 08/23/2009      ADMINORDER 2008-0904-MLM-E (1660 Order-Agreed Order With Denial)  
     Classification: Minor  
     Citation: 30 TAC Chapter 335, SubChapter A 335.10(c)  
               40 CFR Chapter 262, SubChapter I, PT 262, SubPT B 262.20(a)  
     Description: Failure to properly complete waste manifests, AR-1473109 and AR-1473113.  
     Classification: Minor  
     Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(4)  
               30 TAC Chapter 335, SubChapter F 335.152(a)(1)  
               40 CFR Chapter 263, SubChapter I, PT 263, SubPT C 264.16(e)  
               40 CFR Chapter 264, SubChapter I, PT 264, SubPT B 264.16(d)(3)  
     Description: Failed to provide records documenting personnel training.  
     Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)

Description: Failed to obtain approval prior to placing a well into service as a public water supply source.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(A)

Description: Failed to limit the storage of hazardous waste to 90 days or less.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(A)

30 TAC Chapter 335, SubChapter E 335.112(a)(8)

40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.173(a)

Description: Failure to provide sufficient cover for hazardous waste containers.

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1	February 02, 2010	(788719)
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**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
LUFKIN CREOSOTING CO., INC.  
RN101638906

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2014-0834-AIR-E**

**I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Lufkin Creosoting Co., Inc. ("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 together stipulate that:

1. The Respondent owns and operates a wood treatment plant at 5865 South United States Highway 69 in Lufkin, Angelina 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 Executive Director 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 July 24, 2013.
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 Fourteen Thousand Four Hundred Dollars (\$14,400) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Thousand Seven Hundred Sixty Dollars (\$5,760) of the administrative penalty and Two Thousand Eight Hundred

Eighty Dollars (\$2,880) 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. Five Thousand Seven Hundred Sixty Dollars (\$5,760) 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 and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that on December 30, 2013, the Respondent submitted a renewal and amendment application for New Source Review ("NSR") Permit No. 8262 to authorize the emissions associated with Working Tank Nos. 1 and 2, the Vacuum Return Tank, and the creosote loading/unloading operations.
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 obtain authorization for sources of air emissions, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during a record review conducted on June 21, 2013. Specifically, the construction and emissions from Working Tank Nos. 1 and 2, the operation and emissions from the Vacuum Return Tank, and the creosote loading/unloading operations were not properly authorized under New Source Review Permit No. 8262. The Respondent operated the working tanks that are covered by conical shaped roofs raised approximately 8 inches above the tank walls around their perimeter containing hot creosote and the Vacuum Return Tank that is an open topped tank containing creosote laden water and conducted creosote loading/unloading operations from the tanker truck to the storage tanks and from the Treatment Cylinders to the storage tanks prior to obtaining the proper authorization.

### 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: Lufkin Creosoting Co., Inc., Docket No. 2014-0834-AIR-E" to:

Financial Administration Division, Revenue Operations 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, Five Thousand Seven Hundred Sixty Dollars (\$5,760) of the assessed administrative penalty shall be offset with the condition that the SEP defined in Attachment A, incorporated herein by reference, is implemented by the Respondent. 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. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit renewal and amendment application within 30 days after the date of such requests, or by any other deadline specified in writing; and
  - b. Within 180 days after the effective date of this Agreed Order, submit written certification that a permit renewal and amendment has been obtained or that operation has ceased until such time that appropriate authorization is obtained. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Air Section Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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.
8. 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.

9. 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.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

Pam Nancie J  
For the Executive Director

3/25/15  
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]  
Signature

October -28-2014  
Date

Danny Vines  
Name (Printed or typed)  
Authorized Representative of  
Lufkin Creosoting Co., Inc.

Vice President  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.

**Attachment A**  
**Docket Number: 2014-0834-AIR-E**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>Lufkin Creosoting Co., Inc.</b>
<b>Penalty Amount:</b>	<b>Eleven Thousand Five Hundred Twenty Dollars (\$11,520)</b>
<b>SEP Offset Amount:</b>	<b>Five Thousand Seven Hundred Sixty Dollars (\$5,760)</b>
<b>Type of SEP:</b>	<b>Contribution to a Third-Party Pre-Approved SEP</b>
<b>Third-Party Administrator:</b>	<b>Railroad Commission of Texas</b>
<b>Project Name:</b>	<b><i>Alternative Fuels Clean School Bus Replacement Program</i></b>
<b>Location of SEP:</b>	<b>Statewide, Preference for Angelina County</b>

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 SEP Offset Amount is set forth above and such offset 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 the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Railroad Commission of Texas** for the *Alternative Fuels Clean School Bus Replacement Program*. The contribution will be used in accordance with the SEP between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the contribution will be used to reduce nitrogen oxides, volatile organic compounds, carbon monoxide, and particulate matter emissions by replacing older diesel buses with newer buses that meet more stringent emission standards.

The Third-Party Administrator shall use the SEP Offset Amount for up to 100% of the purchase price of a propane or natural gas powered school bus that is model year 2010 or newer to public school districts and public charter schools to replace a diesel school bus that is model year 2002 or older. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used for the direct cost of implementing the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director (“ED”), be applied to another pre-approved SEP.

The 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. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

This SEP will directly benefit air quality by reducing harmful exhaust emissions which contribute to the formation of ozone and may cause or exacerbate a number of respiratory diseases, including asthma. In addition, by encouraging less school bus idling, this SEP contributes to public awareness of environmental matters.

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator 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 Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **Railroad Commission of Texas SEP** and shall mail the contribution with a copy of the Agreed Order to:

Alternative Energy Division  
Railroad Commission of Texas  
P.O. Box 12967  
Austin, Texas 78711-2967

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset 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 Offset Amount due to the Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

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

Lufkin Creosoting Co., Inc.  
Agreed Order - Attachment A

#### 4. **Failure to Fully Perform**

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP; 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  
P.O. Box 13087  
Austin, Texas 78711-3087

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