

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 46899
LUFKIN CREOSOTING CO., INC.
RN101638906
Docket No. 2013-0993-IHW-E

Order Type:

Agreed Order

Media:

IHW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

5865 South U.S. Highway 69, Lufkin, Angelina County

Type of Operation:

wood preserving facility

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: September 11, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: \$30,627

Total Paid to General Revenue: \$15,314

Total Due to General Revenue: \$15,313

**Supplemental Environmental Project
("SEP") Conditional Offset:**

Name of SEP: Big Thicket Association - *Wetland Species and Ecosystem Analysis*

Compliance History Classifications:

Person/CN – Satisfactory
Site/RN – Satisfactory

Major Source: Yes

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002 (PCW 1); September 2011 (PCW 2)

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: September 20, 2012; February 19, 2013

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

Date(s) of NOE(s): May 9, 2013

Violation Information

1. Caused, suffered, allowed or permitted the unauthorized discharge of industrial solid waste (creosote) [30 TEX. ADMIN. CODE § 335.4].
2. Failed to contact the transporter and/or owner or operator of the designated hazardous waste disposal facility within 35 days of the date the waste was accepted by the initial transporter, if the generator does not receive a copy of the manifest signed by the owner or operator of the designated facility [40 C.F.R. § 262.42(a) and 30 TEX. ADMIN. CODE § 335.13(j)].
3. Failed to describe in the Contingency Plan how the Facility will respond to infrequent and incidental storage yard drippage, and failed to operate the Facility to minimize the possibility of unplanned spills and/or releases to the air and soil [40 C.F.R. §§ 265.31 and 265.440(c)(1)(i), (ii) and (iii), and 30 TEX. ADMIN. CODE §§ 335.69(a)(4) and 335.112(a)(2)].
4. Failed to maintain records of hazardous waste determinations and classifications [40 C.F.R. § 262.40(c) and 30 TEX. ADMIN. CODE §§ 335.70(a) and 335.513].
5. Failed to meet the requirements for the assessment and operation of the drip pad [40 C.F.R. §§ 262.34(a)(1)(iii), 265.15, 265.440, 265.441, 265.443 and 265.444, and 30 TEX. ADMIN. CODE §§ 335.69(a)(1)(C) and 335.112(a)(18)].
6. Failed to thoroughly clean the drip pad surface in a manner and frequency sufficient to remove accumulated residues of hazardous waste and/or other materials, thereby allowing weekly inspections of the entire drip pad surface, including failing to clean the drip pad surface at least once every 90 days [40 C.F.R. §§ 262.34(a)(1)(iii) and 265.443(i), and 30 TEX. ADMIN. CODE § 335.69(a)(1)(C)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. Submitted documentation on April 24, 2013, detailing how Respondent will immediately abate and contain and prevent the discharge or imminent threat of discharge of industrial solid waste (violation no. 1);
2. Submitted corrected hazardous waste manifests on March 5, 2013, for manifest numbers 1369514, 1369572, 1369452, 1581710, 1581865, 1672848, 1673011, and 1688941 (violation no. 2);
3. Submitted documentation on April 24, 2013, indicating how Respondent will respond to infrequent and incidental storage yard drippage (violation no. 3);
4. Submitted documentation on April 24, 2013, describing how Respondent will minimize the possibility of spills and/or releases (violation no. 3);
5. Began maintaining on March 6, 2015, documentation of a hazardous waste determination and waste classification on the scrap treated wood (violation no. 4);
6. Submitted an assessment of the drip pad prepared by a professional engineer on December 31, 2013 (violation no. 5);
7. Submitted documentation on April 24, 2013, describing how Respondent will conduct weekly inspections of the drip pad and maintain documentation of the weekly inspections (violation no. 5); and
8. Submitted documentation on April 24, 2013, describing how Respondent will conduct cleanings of the drip pad and maintain documentation of the drip pad cleanings (violation nos. 5 and 6).

Technical Requirements:

N/A – all violations corrected

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 46899
LUFKIN CREOSOTING CO., INC.
RN101638906
Docket No. 2013-0993-IHW-E

Litigation Information

Date Petition(s) Filed: August 1, 2014
Date Answer Filed: August 20, 2014
SOAH Referral Date: October 14, 2014
Hearing Date(s):
Preliminary hearing: January 15, 2015 (waived)
Evidentiary hearing: July 21-23, 2015 (continued);
September 9-11, 2015 (remanded)
Settlement Date: July 31, 2015

Contact Information

TCEQ Attorneys: Tracy Chandler, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363
TCEQ SEP Attorney: Meaghan Bailey, Litigation Division, (512) 239-3400
TCEQ Enforcement Coordinator: Keith Frank, Enforcement Division, (512) 239-1203
TCEQ Regional Contact: Marilyn Gates, Beaumont Regional Office, (409) 898-3838
Respondent Contact: Danny Vines, Vice President, LUFKIN CREOSOTING CO., INC., P.O. Box 1207, Lufkin, Texas 75902
Respondent's Attorney: Robert E. "Robin" Morse, III, Crain Caton & James, 1401 McKinney Street, Suite 1700, Houston, Texas 77010-4035

Attachment A
Docket Number: 2013-0993-IHW-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Lufkin Creosoting Co., Inc.
Penalty Amount:	Thirty Thousand Six Hundred Twenty-Seven Dollars (\$30,627)
SEP Offset Amount:	Fifteen Thousand Three Hundred Thirteen Dollars (\$15,313)
Type of SEP:	Contribution to a Pre-Approved Third-Party Administrator
Third-Party Administrator:	Big Thicket Association
Project Name:	<i>Wetland Species and Ecosystem Analysis</i>
Location of SEP:	Hardin, Jefferson, Orange, Jasper, Liberty, Polk, and Tyler Counties

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

1. Project Description

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Big Thicket Association** for the *Wetland Species and Ecosystem Analysis*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to inventory an additional taxonomic group, such as lichens, bryophytes, mussels, mollusks, amphibians, fish, or birds (the “Project”). The Project will involve collecting specimens from the Preserve as well as wetland properties in Orange and Jefferson Counties, which are in the process of being donated to the Preserve. Currently, a Memorandum of Understanding regarding the impending donation is in place that will allow inventory of these properties. These properties have never been inventoried and need data for resource management. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely 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 able to be spent on the specifically identified SEP may, at the discretion of the Executive Director, be applied to another pre-approved SEP. Respondent shall not profit in any manner from this SEP.

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

B. Environmental Benefit

The Project will benefit the environment by identifying the biodiversity, both native and exotic, in wetland wildlife corridors to assist in stewardship and sustainability. It will also assess the state of pollution indicator species to determine the impact of pollution on the Preserve. Additionally, inventories will identify areas where invasive species are present and aid in the analysis of harmful invasive species spreads and their impacts so that areas for removal can be identified.

C. Minimum Expenditure

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, Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. Respondent shall make the check payable to **Big Thicket Association SEP** and shall mail the contribution with a copy of the Agreed Order to:

Big Thicket Association
Attention: Jan Ruppel, President
P.O. Box 198
Saratoga, Texas 77585

3. Records and Reporting

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

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

4. Failure to Fully Perform

If 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 Respondent failed to fully implement and complete the Project, 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, 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:

Lufkin Creosoting Co., Inc.
Docket No. 2013-0993-IHW-E
Attachment A

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

6. Recognition

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	13-May-2013			
	PCW	30-Jun-2015	Screening	20-May-2013	EPA Due 17-Oct-2013

RESPONDENT/FACILITY INFORMATION

Respondent	LUFKIN CREOSOTING CO., INC.				
Reg. Ent. Ref. No.	RN101638906				
Facility/Site Region	10-Beaumont	Major/Minor Source	Major		

CASE INFORMATION

Enf./Case ID No.	46899	No. of Violations	1
Docket No.	2013-0993-IHW-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Michael Meyer
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

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

Economic Benefit Enhancement* **Subtotal 6**

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

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 20-May-2013

Docket No. 2013-0993-IHW-E

Respondent LUFKIN CREOSOTING CO., INC.

Policy Revision 2 (September 2002)

Case ID No. 46899

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101638906

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

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 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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for one order containing a denial of liability.

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

Screening Date	20-May-2013	Docket No.	2013-0993-IHW-E	PCW
Respondent	LUFKIN CREOSOTING CO., INC.			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	46899			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN101638906			
Media [Statute]	Industrial and Hazardous Waste			
Enf. Coordinator	Michael Meyer			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm				Percent <input type="text" value="0%"/>
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="1%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	x	

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	x

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

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

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent LUFKIN CREOSOTING CO., INC.
Case ID No. 46899
Reg. Ent. Reference No. RN101638906
Media Violation No. 1 Industrial and Hazardous Waste

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$200	19-Feb-2013	5-Mar-2013	0.04	\$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 cost to submit corrected hazardous waste manifests. The date required is the investigation date, and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance **TOTAL**



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	13-May-2013	Screening	20-May-2013	EPA Due	17-Oct-2013
	PCW	30-Jun-2015				

RESPONDENT/FACILITY INFORMATION	
Respondent	LUFKIN CREOSOTING CO., INC.
Reg. Ent. Ref. No.	RN101638906
Facility/Site Region	10-Beaumont
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	46899	No. of Violations	6
Docket No.	2013-0993-IHW-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Michael Meyer
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$30,750
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	20.0% Enhancement	Subtotals 2, 3, & 7	\$6,150
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Notes: Enhancement for one order containing a denial of liability.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$6,748
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$89
 Estimated Cost of Compliance: \$4,450
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$30,152
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: [Empty box]

Final Penalty Amount	\$30,152
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$30,152
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$30,152
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Screening Date 20-May-2013

Docket No. 2013-0993-IHW-E

PCW

Respondent LUFKIN CREOSOTING CO., INC.

Policy Revision 3 (September 2011)

Case ID No. 46899

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101638906

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

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 Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 20%

Screening Date	20-May-2013	Docket No.	2013-0993-IHW-E	PCW
Respondent	LUFKIN CREOSOTING CO., INC.			<i>Policy Revision 3 (September 2011)</i>
Case ID No.	46899			<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No.	RN101638906			
Media [Statute]	Industrial and Hazardous Waste			
Enf. Coordinator	Michael Meyer			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

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

OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="15.0%"/>

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0.0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

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

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent LUFKIN CREOSOTING CO., INC.
Case ID No. 46899
Reg. Ent. Reference No. RN101638906
Media Violation No. 1 Industrial and Hazardous Waste

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)	\$500	20-Sep-2012	24-Apr-2013	0.59	\$15	n/a	\$15

Notes for DELAYED costs

Estimated cost to develop and implement procedures designed to prevent unauthorized discharges. The date required is the investigation date, and the final date is the compliance date.

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 \$500

TOTAL \$15

Screening Date 20-May-2013	Docket No. 2013-0993-IHW-E	PCW
Respondent LUFKIN CREOSOTING CO., INC.		<i>Policy Revision 3 (September 2011)</i>
Case ID No. 46899		<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No. RN101638906		
Media [Statute] Industrial and Hazardous Waste		
Enf. Coordinator Michael Meyer		

Violation Number

Rule Cite(s)

30 Tex. Admin. Code §§ 335.69(a)(4) and 335.112(a)(2) and 40 Code of Federal Regulations ("CFR") §§ 265.31, 265.440(c)(1)(i), (c)(1)(ii), and (c)(1)(iii)

Violation Description

Failed to describe in the contingency plan how the Facility will respond to infrequent and incidental storage yard drippage and to operate the Facility to minimize the possibility of unplanned spills and/or releases to the air and soil.

Base Penalty

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

		Harm			
		Major	Moderate	Minor	
OR	Release				Percent <input type="text" value="0.0%"/>
	Actual				
	Potential				

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
		x			Percent <input type="text" value="15.0%"/>

Matrix Notes

100% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

Reduction

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent achieved compliance on April 24, 2013, prior to the NOE dated May 9, 2013.

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent LUFKIN CREOSOTING CO., INC.
Case ID No. 46899
Reg. Ent. Reference No. RN101638906
Media Violation No. Industrial and Hazardous Waste
 2

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)	\$1,500	19-Feb-2013	24-Apr-2013	0.18	\$13	n/a	\$13

Notes for DELAYED costs

Estimated cost to develop and implement procedures to respond to incidental storage yard drippage and operation procedures to minimize the possibility of unplanned spills and/or releases to the air and soil. The date required is the investigation date, and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,500

TOTAL \$13

Screening Date 20-May-2013	Docket No. 2013-0993-IHW-E	PCW
Respondent LUFKIN CREOSOTING CO., INC.		<i>Policy Revision 3 (September 2011)</i>
Case ID No. 46899		<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No. RN101638906		
Media [Statute] Industrial and Hazardous Waste		
Enf. Coordinator Michael Meyer		

Violation Number

Rule Cite(s)

30 Tex. Admin. Code §§ 335.70(a) and 335.513 and 40 CFR § 262.40(c)

Violation Description

Failed to maintain records of hazardous waste determinations and classifications.

Base Penalty

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

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
<input type="text"/>	x	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

100% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x

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

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

Reduction

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

Notes

The Respondent does not meet the good faith criteria for this violation because compliance was achieved after the EDPRP/Settlement Offer.

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent LUFKIN CREOSOTING CO., INC.
Case ID No. 46899
Reg. Ent. Reference No. RN101638906
Media Violation No. Industrial and Hazardous Waste
 3

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	\$250	19-Feb-2013	6-Mar-2015	2.04	\$26	n/a	\$26
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 cost to maintain records of a waste determination and classification on one waste stream. The date required is the investigation date, and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

TOTAL

\$26

Screening Date 20-May-2013 **Docket No.** 2013-0993-IHW-E **PCW**
Respondent LUFKIN CREOSOTING CO., INC. *Policy Revision 3 (September 2011)*
Case ID No. 46899 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN101638906
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Michael Meyer

Violation Number 4

Rule Cite(s)
 30 Tex. Admin. Code §§ 335.69(a)(1)(C) and 335.112(a)(18) and 40 CFR §§ 262.34(a)(1)(iii), 265.15, 265.440, 265.441, 265.443, and 265.444

Violation Description
 Failed to meet the requirements for the assessment and operating requirements at the drip pad. Specifically, the Respondent did not maintain a written assessment demonstrating compliance with the regulations. Also, the Respondent failed to maintain documentation demonstrating the cleanings and weekly inspections of the drip pad were being conducted.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			15.0%

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 64 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

25.0%

Reduction \$937

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark w th x)

Notes
 The Respondent achieved compliance on April 24, 2013, prior to the NOE dated May 9, 2013.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$26

Violation Final Penalty Total \$3,563

This violation Final Assessed Penalty (adjusted for limits) \$3,563

Economic Benefit Worksheet

Respondent LUFKIN CREOSOTING CO., INC.
Case ID No. 46899
Reg. Ent. Reference No. RN101638906
Media Industrial and Hazardous Waste
Violation No. 4

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	\$500	19-Feb-2013	24-Apr-2013	0.18	\$4	n/a	\$4
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	19-Feb-2013	31-Dec-2013	0.86	\$22	n/a	\$22

Notes for DELAYED costs
 Estimated cost to maintain a written assessment for the drip pad demonstrating compliance with the rules and regulations as well as records of the cleanings. Estimated cost to update procedures and begin maintaining records documenting the cleaning and weekly inspections of the drip pad.. The dates required are the investigation dates, and the final dates are the dates of compliance.

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$1,000	TOTAL	\$26
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Screening Date	20-May-2013	Docket No.	2013-0993-IHW-E	PCW
Respondent	LUFKIN CREOSOTING CO., INC.	<i>Policy Revision 3 (September 2011)</i>		
Case ID No.	46899	<i>PCW Revision August 3, 2011</i>		
Reg. Ent. Reference No.	RN101638906			
Media [Statute]	Industrial and Hazardous Waste			
Enf. Coordinator	Michael Meyer			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

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

OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="30.0%"/>

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0.0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

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

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent LUFKIN CREOSOTING CO., INC.
Case ID No. 46899
Reg. Ent. Reference No. RN101638906
Media Industrial and Hazardous Waste
Violation No. 5

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)	\$1,000	19-Feb-2013	24-Apr-2013	0.18	\$9	n/a	\$9

Notes for DELAYED costs

Estimated cost to remove wastes from the drip pad. The date required is the investigation date, and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,000

TOTAL \$9

Screening Date 20-May-2013 **Docket No.** 2013-0993-IHW-E **PCW**
Respondent LUFKIN CREOSOTING CO., INC. *Policy Revision 3 (September 2011)*
Case ID No. 46899 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN101638906
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Michael Meyer

Violation Number 6

Rule Cite(s)

30 Tex. Admin. Code § 335.13(j) and 40 CFR § 262.42(a)(2)

Violation Description

Failed to contact the transporter and/or owner or operator of the designated hazardous waste disposal facility within 35 days of the date the waste was accepted by the initial transporter, if the generator does not receive a copy of the manifest signed by the owner or operator of the designated facility. Specifically, uniform hazardous waste manifest numbers 1672848, 1673011, and 1688941, dated September 28, October 20, and December 15, 2011 respectively did not have the signature of the designated facility.

Base Penalty \$25,000

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

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
			x

Percent 1.0%

Matrix Notes

Greater than 70% of the rule requirement was met.

Adjustment \$24,750

\$250

Violation Events

Number of Violation Events 3

14 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$750

Three single events (one for each manifest) are recommended.

Good Faith Efforts to Comply

25.0%

Reduction \$187

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

Notes The Respondent achieved compliance on March 5, 2013, prior to the NOE dated May 9, 2013.

Violation Subtotal \$563

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$713

This violation Final Assessed Penalty (adjusted for limits) \$713

Economic Benefit Worksheet

Respondent LUFKIN CREOSOTING CO., INC.
Case ID No. 46899
Reg. Ent. Reference No. RN101638906
Media Violation No. Industrial and Hazardous Waste
 6

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)	\$200	19-Feb-2013	5-Mar-2013	0.04	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit corrected hazardous waste manifests. The date required is the investigation date, and the final date is the compliance date.

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 \$200

TOTAL \$0

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



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.

Customer, Respondent, or Owner/Operator: CN600880728, LUFKIN CREOSOTING CO., INC. **Classification:** SATISFACTORY **Rating:** 4.60

Regulated Entity: RN101638906, LUFKIN CREOSOTING **Classification:** SATISFACTORY **Rating:** 4.60

Complexity Points: 9 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 5865 S US HIGHWAY 69 LUFKIN, TX 75901-2170, ANGELINA COUNTY

TCEQ Region: REGION 10 - BEAUMONT

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

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

Date Compliance History Report Prepared: March 12, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: March 12, 2009 to March 12, 2014

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

Name: Michael Meyer

Phone: (512) 239-4492

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)

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)

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. 2013-0993-IHW-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding LUFKIN CREOSOTING CO., INC. ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Robert E. "Robin" Morse III of the law firm Crain Caton & James, together stipulate that:

1. Respondent owns and operates a wood preserving facility located at 5865 South U.S. Highway 69 in Lufkin, Angelina County, Texas (the "Facility"). The Facility contains and/or involves the management of industrial hazardous waste ("IHW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. The Executive Director and Respondent agree that TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, 7.070, and 7.073, and that Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of thirty thousand six hundred twenty-seven dollars (\$30,627.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid fifteen thousand three hundred fourteen dollars (\$15,314.00) of the penalty. Pursuant to TEX. WATER CODE § 7.067, fifteen thousand three hundred thirteen dollars (\$15,313.00) of the penalty shall be conditionally offset by Respondent's timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the SEP Agreement ("Attachment A" - incorporated herein by reference). Respondent's obligation to pay the conditionally offset portion of the penalty shall be discharged upon full compliance with all the terms and conditions of this Order, which includes any payment schedule and the timely and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director.
5. The Executive Director and Respondent agree on a settlement of the matters addressed in this Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). 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.

6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions contained in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon full compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
 - a. Submitted documentation detailing how Respondent will immediately abate and contain and prevent the discharge or imminent threat of discharge of industrial solid waste on April 24, 2013 (Allegation No. 1);
 - b. Submitted corrected hazardous waste manifests for manifest numbers 1369514, 1369572, 1369452, 1581710, 1581865, 1672848, 1673011, and 1688941 on March 5, 2013 (Allegation No. 2.a.);
 - c. Submitted documentation indicating how Respondent will respond to infrequent and incidental storage yard drippage, on April 24, 2013 (Allegation 2.b.);
 - d. Submitted documentation describing how Respondent will minimize the possibility of spills and/or releases, on April 24, 2013 (Allegation 2.b.);
 - e. Began maintaining documentation of a hazardous waste determination and waste classification on the scrap treated wood, on March 6, 2015 (Allegation No. 2.c.);
 - f. Submitted an assessment of the drip pad prepared by a professional engineer on December 31, 2013 (Allegation 2.d.);
 - g. Submitted documentation describing how Respondent will conduct weekly inspections of the drip pad and maintain documentation of the weekly inspections, on April 24, 2013 (Allegation No. 2.d.); and
 - h. Submitted documentation describing how Respondent will conduct cleanings of the drip pad and maintain documentation of the drip pad cleanings, on April 24, 2013 (Allegation 2.d. and 2.e).

II. ALLEGATIONS

1. During an investigation conducted on September 20, 2012, an investigator documented that Respondent caused, suffered, allowed or permitted the unauthorized discharge of industrial solid waste, in violation of 30 TEX. ADMIN. CODE § 335.4. Specifically, creosote spills (F034) were documented at the Facility.
2. During an investigation conducted on February 19, 2013, an investigator documented that Respondent:
 - a. Failed to contact the transporter and/or owner or operator of the designated hazardous waste disposal facility within 35 days of the date the waste was accepted by the initial transporter, if the generator does not receive a copy of

the manifest signed by the owner or operator of the designated facility, in violation of 40 C.F.R. § 262.42(a) and 30 TEX. ADMIN. CODE § 335.13(j). Specifically, uniform hazardous waste manifest numbers: 1369514 (dated January 6, 2011), 1369572 (dated January 11, 2011), 1369452 (dated January 12, 2011), 1581710 (dated July 7, 2011), 1581865 (dated July 21, 2011), 1672848 (dated September 28, 2011), 1673011 (dated October 20, 2011) and 1688941 (dated December 15, 2011) were not signed by the owner or operator of the designated facility;

- b. Failed to describe in the Contingency Plan how the Facility will respond to infrequent and incidental storage yard drippage and failed to operate the Facility to minimize the possibility of unplanned spills and/or releases to the air and soil, in violation of 40 C.F.R. §§ 265.31 and 265.440(c)(1)(i), (ii) and (iii), and 30 TEX. ADMIN. CODE §§ 335.69(a)(4) and 335.112(a)(2);
- c. Failed to maintain records of hazardous waste determinations and classifications, in violation of 40 C.F.R. § 262.40(c) and 30 TEX. ADMIN. CODE §§ 335.70(a) and 335.513. Specifically, Respondent did not maintain records of a waste determination and waste classification on the scrap treated wood at the Facility;
- d. Failed to meet the requirements for the assessment and operation of the drip pad, in violation of 40 C.F.R. §§ 262.34(a)(1)(iii), 265.15, 265.440, 265.441, 265.443 and 265.444, and 30 TEX. ADMIN. CODE §§ 335.69(a)(1)(C) and 335.112(a)(18). Specifically, Respondent did not maintain a written assessment demonstrating compliance with the regulations. Also, Respondent failed to maintain documentation demonstrating the cleanings and weekly inspections of the drip pad were being conducted; and
- e. Failed to thoroughly clean the drip pad surface in a manner and frequency sufficient to remove accumulated residues of hazardous waste and/or other materials, thereby allowing weekly inspections of the entire drip pad surface, including failing to clean the drip pad surface at least once every 90 days, in violation of 40 C.F.R. §§ 262.34(a)(1)(iii) and 265.443(i), and 30 TEX. ADMIN. CODE § 335.69(a)(1)(C). Specifically, the entire drip pad surface was covered in a layer of material and the concrete surface was not visible.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Section I, Paragraph 4. The payment of this penalty and Respondent's compliance with all of the requirements set forth in this Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
2. Respondent shall implement and complete a SEP as set forth in Section I, Paragraph 4. The amount of fifteen thousand three hundred thirteen dollars (\$15,313.00) of the assessed administrative penalty is conditionally offset based on Respondent's implementation and completion a SEP pursuant to the terms and conditions contained in the SEP Agreement, as defined in Attachment A. Penalty payments for any portion of the SEP deemed by the Executive Director as not

- complete shall be paid within 30 days after the date the Executive Director demands payment.
3. All relief not expressly granted in this Order is denied.
 4. The duties and provisions imposed by this Order shall apply to and be binding upon Respondent.
 5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
 6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
 7. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
 8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Order is the date it is signed by the Commission or the Executive Director. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

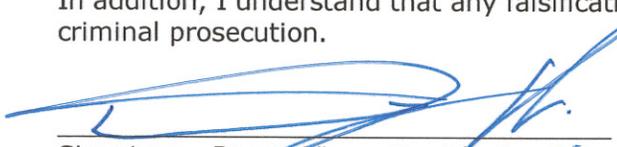
October 1, 2015
Date

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

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

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

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



Signature - Danny Vines, President
LUFKIN CREOSOTING CO., INC.
5865 U.S. Highway 69 South
Lufkin, Texas 75901

Vice President

Date

July 31 - 2015

If mailing address has changed, please check this box and provide the new address below:

ATTACHMENT A

Attachment A
Docket Number: 2013-0993-IHW-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Lufkin Creosoting Co., Inc.
Penalty Amount:	Thirty Thousand Six Hundred Twenty-Seven Dollars (\$30,627)
SEP Offset Amount:	Fifteen Thousand Three Hundred Thirteen Dollars (\$15,313)
Type of SEP:	Contribution to a Pre-Approved Third-Party Administrator
Third-Party Administrator:	Big Thicket Association
Project Name:	<i>Wetland Species and Ecosystem Analysis</i>
Location of SEP:	Hardin, Jefferson, Orange, Jasper, Liberty, Polk, and Tyler Counties

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

1. Project Description

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Big Thicket Association** for the *Wetland Species and Ecosystem Analysis*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to inventory an additional taxonomic group, such as lichens, bryophytes, mussels, mollusks, amphibians, fish, or birds (the “Project”). The Project will involve collecting specimens from the Preserve as well as wetland properties in Orange and Jefferson Counties, which are in the process of being donated to the Preserve. Currently, a Memorandum of Understanding regarding the impending donation is in place that will allow inventory of these properties. These properties have never been inventoried and need data for resource management. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely 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 able to be spent on the specifically identified SEP may, at the discretion of the Executive Director, be applied to another pre-approved SEP. Respondent shall not profit in any manner from this SEP.

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

B. Environmental Benefit

The Project will benefit the environment by identifying the biodiversity, both native and exotic, in wetland wildlife corridors to assist in stewardship and sustainability. It will also assess the state of pollution indicator species to determine the impact of pollution on the Preserve. Additionally, inventories will identify areas where invasive species are present and aid in the analysis of harmful invasive species spreads and their impacts so that areas for removal can be identified.

C. Minimum Expenditure

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, Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. Respondent shall make the check payable to **Big Thicket Association SEP** and shall mail the contribution with a copy of the Agreed Order to:

Big Thicket Association
Attention: Jan Ruppel, President
P.O. Box 198
Saratoga, Texas 77585

3. Records and Reporting

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

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

4. Failure to Fully Perform

If 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 Respondent failed to fully implement and complete the Project, 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, 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:

Lufkin Creosoting Co., Inc.
Docket No. 2013-0993-IHW-E
Attachment A

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

6. Recognition

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