

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
*Protecting Texas by Reducing and Preventing Pollution*

May 18, 2011

The Honorable Steven D. Arnold  
State Office of Administrative Hearings  
William P. Clements Building  
300 West 15th Street, Room 502  
Austin, Texas 78701

Re: Executive Director's Exceptions to the Administrative Law Judge's Proposed Order  
TCEQ Docket No. 2009-1515-AIR-E; SOAH Docket No. 582-11-0249

Dear Judge Arnold:

Enclosed is a true and correct copy of the Executive Director's Exceptions to the Administrative Law Judge's Proposed Order (the "Exceptions").

The original of the Exceptions was filed with the Office of the Chief Clerk of the Texas Commission on Environmental Quality on this day.

Sincerely,

A handwritten signature in black ink, appearing to read "Laurencia N. Fasoyiro".

Laurencia N. Fasoyiro  
Attorney  
Litigation Division

Enclosure

cc: Charles R. Nestrud, Chisenhall, Nestrud & Julian, P.A., Regions Center, 400 West Capitol, Suite 2840, Little Rock, Arkansas 72201, Certified Mail No. 7009 1680 0002 2323 6870; E-mail: CNestrud@cnjlaw.com  
Nadia Hameed, Enforcement Division, TCEQ, MC R-12  
Blas Coy, Public Interest Counsel, MC 103



**SOAH DOCKET NO. 582-11-0249**  
**TCEQ DOCKET NO. 2009-1515-AIR-E**

**EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
Petitioner**

**v.**

**ALBEMARLE CORPORATION,  
Respondent**

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**BEFORE THE**

**STATE OFFICE OF**

**ADMINISTRATIVE HEARINGS**

**THE EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

The Executive Director ("ED") of the Texas Commission on Environmental Quality ("Executive Director" or "ED") files these Exceptions to the Administrative Law Judge's ("ALJ's") Proposal for Decision ("PFD") and Proposed Order, pursuant to 30 TEX. ADMIN. CODE § 80.257.

**I. Introduction**

Albemarle Corporation ("Respondent") owns and operates a chemical manufacturing plant located at 2500 North South Street, Pasadena, Harris County, Texas (the "Plant"). On July 30, 2009 through August 7, 2009, a TCEQ Houston Regional Office investigator documented that Respondent failed to maintain the minimum net heating value of 300 British Thermal Units per standard cubic feet per minute ("BTU/scfm") on Flare G-D-1; and failed to maintain the correct list of equipment components that were excluded from the Leak Detection and Repair ("LDAR") monitoring program. On November 13, 2009, a TCEQ Enforcement Division Section Manager, David Van Soest ("Mr. Van Soest"), mailed a Proposed Agreed Order to Respondent ("Proposed Order") for an expedited settlement of the case subject to the following conditions: (1) payment of an assessed penalty in the amount of one thousand eight hundred twenty-three dollars (\$1,823.00); (2) A one-time administrative penalty deferral of three hundred sixty-four dollars (\$364.00) resulting in a reduced payable penalty amount of one thousand four hundred fifty-nine dollars (\$1,459.00), if Respondent satisfactorily complied with all the ordering provisions within the time frames listed; (3) Final approval of the Proposed Order and issuance of an Order by the Commissioners; and (4) If no settlement is reached, the ED will proceed with enforcement under Commission's Enforcement Rules.

On January 8, 2010, Respondent mailed a signed version of the Proposed Order with the requested payment of one thousand four hundred fifty-nine dollars (\$1,459.00) to the TCEQ cashier's office. The TCEQ's cashier's office deposited the check within three days as required by law.<sup>1</sup> Upon receipt of the signed Proposed Order, TCEQ Enforcement Division

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<sup>1</sup>TEX. GOVT. CODE § 404.094. FUNDS TO BE DEPOSITED IN TREASURY. (a) Fees, fines, penalties, taxes, charges, gifts, grants, donations, and other funds collected or received by a state agency under law shall be deposited in the treasury, credited to a special fund or funds, and subject to appropriation only for the purposes for which they are otherwise authorized to be expended or disbursed. A deposit shall be made at the earliest possible time that the treasury can accept those funds, but not later than the third business day after the date of receipt. However, if an agency determines that for seasonal or other extraordinary reasons deposits cannot be made by the third business day after the date of receipt, the agency shall provide written notice of the determination to the state auditor and

management determined that the recommended penalty for Violation No. 1 in the Penalty Calculation Worksheet ("PCW") was inadvertently miscalculated. The error was corrected by changing the violation events in Violation No. 1 from a single potential minor event to seven quarterly potential moderate events, increasing the penalty from one thousand four hundred fifty-nine dollars (\$1,459.00) to twenty-three thousand six hundred thirty-five dollars (\$23,635.00). This recalculation of the penalty accurately reflects TCEQ's Penalty Policy for classification of similar violations.<sup>2</sup>

On March 12, 2010, a TCEQ enforcement coordinator Nadia Hameed ("Ms. Hameed") notified Respondent of the mistake in the penalty calculation and the resulting increase in the recommended penalty. Respondent refused to accept a new Proposed Order and insisted the original inaccurate version be presented for Commission approval. That request was denied. Neither the ED nor any of his representatives has signed the Proposed Order. The sole signatory on the Proposed Order is the Respondent. Because no settlement was reached, the ED filed the Executive Director's Preliminary Report and Petition ("EDPRP") against Respondent on June 21, 2010. A contested case hearing was requested and the Hearing on the Merits was scheduled for March 31, 2011.

On February 8, 2011, Respondent filed its Motion for Summary Disposition ("the Motion") arguing that the signed Proposed Order constituted a binding settlement agreement with the ED and that it disposed the ongoing enforcement action. Respondent argued the ED should not be allowed to renege on that settlement agreement but should instead enforce the settlement agreement. On February 23, 2011, the ED filed a response to Respondent's Motion disputing the assertion that the signed Proposed Order was a legally binding contract. On March 28, 2011, the ALJ issued Order No. 3, cancelling the March 31, 2011 hearing on the merit and notifying the parties of his intent to grant Respondent's Motion. On April 28, 2011, the ALJ issued a Proposal for Decision ("PFD") finding that there was a binding contract between the ED and Respondent and that Respondent is entitled to have the Proposed Agreed Order submitted to the Commission for consideration.

## II. Exceptions

The Executive Director respectfully disagrees with the ALJ's finding based on the ED's response to the Motion and respectfully requests the ALJ to reconsider his findings.<sup>3</sup> Also, the ED disagrees with the ALJ for the following additional reasons:

There was no contract between the ED and Respondent because there was no agreement regarding the final terms of the Proposed Order. This is evidenced by the fact the ED did not sign the proposed agreement upon receipt of the signed version from the Respondent. The settlement negotiation halted when the ED proposed a modification to the recommended penalty, which Respondent rejected. Respondent's Motion argues that the ED is estopped from reneging on an agreement because "An offer of settlement becomes a binding contract

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comptroller with an explanation of the circumstances that require the delay. If the state auditor finds that an agency has not complied with this subsection, the state auditor shall make an estimate of any resulting financial loss to the state, taking into consideration compliance costs that would have been additionally incurred by the agency, and report the amount to the legislative audit committee, the governor, and the comptroller.

<sup>2</sup> The violation was changed from potential minor to potential moderate due to the amount of operating hours Respondent operated below the minimum net heating value i.e. 2,244 hours, which constituted 23 percent of total operating period of 9,669 hours.

<sup>3</sup> ED's Response to Summary Disposition Motion.

when it is accepted by the other party according to its terms."<sup>4</sup> The ED agrees with Respondent's statement but disputes Respondent's interpretation of it. Texas courts interpret settlement agreements according to the rules applicable to contract interpretation.<sup>5</sup> The elements of a valid contract are: (1) an offer, (2) an acceptance, (3) a meeting of the minds, (4) each party's consent to the terms, and (5) execution and delivery of the contract with the intent that it be mutual and binding.<sup>6</sup> Here, the third, fourth and fifth elements are lacking. This was a Proposed Order that was not executed and delivered with the intent that it be binding before it was accepted by the ED and approved by the Commission. When an agreement is reached with a Respondent, the ED signs the Proposed Order, publishes notice of the Proposed Order in the Texas Register, providing 30 days for public comment and presents the matter to the Commission for consideration.<sup>7</sup> The ED has neither signed the Proposed Order nor published it for public comment, indicating that no agreement was reached. Respondent is the sole signatory on the Proposed Order, a clear indication that there was no agreement between the parties. Respondent's signed version of the Proposed Order is based on an inadvertent penalty miscalculation which needs to be modified.

The nature of a Proposed Order is such that either a Respondent or the ED could decide to end the settlement negotiation at any time prior to Commission approval. To set the precedent by deeming a Proposed Order signed by one party as a legally binding contract would not only negatively impact the ED, but it would also negatively impact a respondent, who, after signing a Proposed Order, discovers an error and requests modification of the error. In that case, if the ED were to insist that the signed Proposed Order constituted a binding contract and refused to rescind or modify the Proposed Order before presenting it to the Commission for consideration, the Commission could face an influx of Proposed Orders to which the parties disagree. That would defeat the goal of the parties presenting an agreement to the Commission for approval. It is counterintuitive, if not paradoxical, to present an "Agreed" Order to the Commission for approval when significant disaccord remains between the parties on an essential element of the proposed contract. While the ED strives for excellence in carefully drafting its documents, there are rare occasions when mistakes are discovered after Respondent signs the proposed agreement but before Commission agenda. When that happens, the ED corrects the error with Respondent's consent and may have to republish in a Texas Register notice prior to Commission consideration.

The ED respectfully requests the ALJ to reconsider his finding that a legally binding contract was created since the ED did not accept the Proposed Order as is evidenced by the lack of ED's signature. To hold that the Proposed Order constitutes a contract would disrupt the ED's ability to negotiate agreements and force the ED to present inaccurate Proposed Orders for the Commission's consideration. The ED does not publish a signed order in the Texas Register or present a signed order for the Commission's consideration if both parties disagree on the content of the Proposed Order or if errors exist in the proposed agreement. This will drastically affect the ED's ability of regulated entities and the ED to correct inaccuracies discovered in Proposed Orders prior to Commission agendas and would force the ED to publish inaccurate information in the Texas Register. As a result, the Commission may be faced with a situation where it spends more time determining if a contract indeed

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<sup>4</sup> Petkovsek v. Board of Pardons and Paroles of State of Tex., 785 F. Supp. 82, 85 (E.D. Tex. 1992)

<sup>5</sup> Cities of Abilene v. Public Utility Com'n of Tex., 146 S.W.3d 742, 747 (Tex. App. - Austin, 2004)

<sup>6</sup> DeClaire v. G&B McIntosh Family Ltd. Partnership, 260 S.W.3d 34, 44 (Tex. App. - Houston [1 Dist.], 2008)

<sup>7</sup> 30 TEX. ADMIN. CODE § 70.10(a) and (c)

exists, rather than approving the finality of mutually agreed settlements. The ALJ's finding that the Proposed Order constitutes a binding contract would essentially force parties to be trapped in a proposed settlement agreement even when they know an error exists.

Respondent was on notice when it received the Proposed Order that if an agreement could not be reached with the ED, the enforcement process will proceed. Since the parties did not reach a settlement agreement, the ED respectfully requests that the ALJ reconsider his decision cancelling the hearing on the merit and reschedule a hearing for this enforcement matter.

### III. Other Suggested Modification

The ED suggests the following changes to be made to the PFD:

Please change the name "Naida Hameed" on pages 4 and 6 of the PFD and page 2 of the Order to "Nadia Hameed."

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.  
Executive Director

Stephanie Bergeron Perdue, Deputy Director  
Office of Legal Services

Kathleen C. Decker, Division Director  
Litigation Division



By \_\_\_\_\_  
Laurencia N. Fasoyiro  
State Bar of Texas No. 24012885  
Litigation Division, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087  
(713) 422-8914; (713) 422-8910 (fax)

### CERTIFICATE OF SERVICE

I hereby certify that on this 18<sup>th</sup> day of May, 2011, an original and seven (7) copies of the foregoing "Exceptions to Administrative Judge's Proposal for Decision" ("Exceptions") were filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing Exceptions was sent via electronic mail to Blas Coy, Jr., Attorney, Office of the Public Interest Counsel, Texas Commission on Environmental Quality.

I further certify that on this day a true and correct copy of the foregoing Exceptions was sent via Certified Mail, Return Receipt Requested, Article No. 7009 1680 0002 2323 6870, and via electronic mail to:

Charles R. Nestrud  
Chisenhall, Nestrud & Julian, P.A.  
Regions Center  
400 West Capitol, Suite 2840  
Little Rock, Arkansas 72201  
CNestrud@cnjlaw.com

I further certify that on this day a true and correct copy of the foregoing Exceptions was E-filed to:

The Honorable Steven D. Arnold  
State Office of Administrative Hearings  
William P. Clements Building  
300 West 15<sup>th</sup> Street, Room 502  
Austin, Texas 78701



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Laurencia N. Fasoyiro  
Attorney  
Litigation Division  
Texas Commission on Environmental Quality

**SERVICE LIST**

Albemarle Corporation  
SOAH Docket No. 582-11-0249  
TCEQ Docket No. 2009-1515-AIR-E

The Honorable Judge Steven D. Arnold  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701-1649  
Telephone: (512) 475-4993  
Via: E-Filing

Charles R. Nestrud  
Chisenhall, Nestrud & Julian, P.A.  
Regions Center  
400 West Capitol, Suite 2840  
Little Rock, Arkansas 72201  
CNestrud@cnjlaw.com

Bias J. Coy, Jr., Attorney  
Office of Public Interest Counsel, MC 103  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
Telephone: (512) 239-6363  
Fax: (512) 239-6377

**ATTACHMENT**



Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

February 23, 2011

Via E-Filing

The Honorable William G. Newchurch  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 502  
P.O. Box 13025  
Austin, Texas 78711-3025

Re: Albemarle Corporation  
TCEQ Docket No. 2009-1515-AIR-E;  
SOAH Docket No. 582-11-0249

Dear Judge Newchurch:

Enclosed please find a copy of the Executive Director's Response to Albemarle Corporation's Motion for Summary Disposition and Motion to Enforce Settlement Agreement filed today in the above-referenced matter. If you should have any questions or require additional information, I may be reached at (713) 422-8914.

Sincerely,

A handwritten signature in black ink, appearing to read "Laurencia".

Laurencia N. Fasoyiro  
Attorney  
Litigation Division  
[Laurencia.Fasoyiro@tceq.texas.gov](mailto:Laurencia.Fasoyiro@tceq.texas.gov)

Enclosure

cc: Charles R. Nestrud, Chisenhall, Nestrud & Julian, P.A., Regions Center, 400 West Capitol, Suite 2840, Little Rock, Arkansas 72201, [CNestrud@cnjlaw.com](mailto:CNestrud@cnjlaw.com)  
Nadia Hameed, Enforcement Division, TCEQ, MC R-12  
Blas Coy, Public Interest Counsel, MC 103



**TCEQ DOCKET NO. 2009-1515-AIR-E  
SOAH DOCKET NO. 582-11-0249**

**EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
PETITIONER**

**VS.**

**ALBEMARLE CORPORATION,  
RESPONDENT**

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**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

**EXECUTIVE DIRECTOR'S RESPONSE TO ABLEMARLE CORPORATION'S  
MOTION FOR SUMMARY DISPOSITION AND MOTION TO ENFORCE  
SETTLEMENT AGREEMENT**

TO THE HONORABLE JUDGE WILLIAM G. NEWCHURCH:

The Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ") files this Response to Ablemarle Corporation's ("Ablemarle" or "Respondent") Motion for Summary Disposition and Motion to Enforce Settlement Agreement ("Motion") in the above captioned proceeding. In support hereof, the ED respectfully shows as follows:

**I. BACKGROUND FACTS**

The ED is pursuing an enforcement action against Respondent for violations of the Texas Health & Safety Code and Commission Rules. From July 30, 2009 through August 7, 2009, a TCEQ Houston Regional Office investigator conducted an investigation at Respondent's chemical manufacturing plant located at 2500 North South Street, Pasadena, Harris County, Texas (the "Plant"). The investigator documented violations of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), 40 CFR § 60.18(c)(3)(ii), Air Permit No. 69A, Special Condition ("SC") No. 4A, Air Permit No. 3962, SC No. 3, Air Permit No. 18114, SC No. 2, Federal Operating Permit ("FOP") No. 02285, Special Terms and Condition ("STC") Nos. 1A and 8, and TEX. HEALTH & SAFETY CODE § 382.085(b), for failing to maintain the minimum net

heating value of 300 British Thermal Units per standard cubic feet per minute ("BTU/scfm") on Flare G-D-1; and 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4); Air Permit No. 18114, SC No. 10A, FOP No. 02285, STC No. 8, and violation of TEX. HEALTH & SAFETY CODE § 382.085(b), for failing to maintain the correct list of equipment components that were excluded from the Leak Detection and Repair ("LDAR") monitoring program. On November 13, 2009, a TCEQ Enforcement Division Section Manager David Van Soest ("Mr. Van Soest") sent Respondent a proposed agreed order ("Proposed Order") for an expedited settlement of the case subject to certain conditions.<sup>1</sup> The Proposed Order included the following conditions (1) an assessed penalty in the amount of one thousand eight hundred twenty three dollars (\$1,823.00); (2) A one-time administrative penalty deferral of three hundred sixty-four dollars (\$364.00) resulting in a reduced payable penalty amount of one thousand four hundred fifty-nine dollars (\$1,459.00), if Respondent satisfactorily complied with all the ordering provisions within the time frames listed; (3) Final approval of the Proposed Order and issuance of an Order by the Commissioners; and (4) If no settlement is reached, the ED will proceed with enforcement under Commission's Enforcement Rules.<sup>2</sup>

On January 8, 2010 Albemarle sent a signed version of the Proposed Order with a check in the amount of one thousand four hundred fifty-nine dollars (\$1,459.00) to the TCEQ cashier's office in payment of the penalty.<sup>3</sup> The TCEQ's cashier's office deposited the check within three days as required by law.<sup>4</sup> Upon further review of the Proposed Order by TCEQ Enforcement Division management,

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<sup>1</sup> ED Ex.1, Proposed Agreed Order, cover letter.

<sup>2</sup> ED Ex.1, Proposed Agreed Order, cover letter.

<sup>3</sup> ED Ex. 2, Respondent's signed proposed agreed order.

<sup>4</sup>TEX. GOVT. CODE § 404.094. FUNDS TO BE DEPOSITED IN TREASURY. (a) Fees, fines, penalties, taxes, charges, gifts, grants, donations, and other funds collected or received by a state agency under law shall be deposited in the treasury, credited to a special fund or funds, and subject to appropriation only for the purposes for which they are otherwise authorized to be expended or disbursed. A deposit shall be made at the earliest possible time that the treasury can accept those funds, but not later than the third business day after the date of receipt. However, if an agency determines that for seasonal or other extraordinary reasons deposits cannot be made by the third business day after the date of receipt, the agency shall provide written notice of the determination to the state auditor and comptroller with an explanation of the circumstances that require the delay. If the state auditor finds that an agency has not complied with this subsection, the state auditor shall make an estimate of any resulting financial loss to the state, taking into consideration compliance costs that would have been additionally incurred by the agency, and report the amount to the legislative audit committee, the governor, and the comptroller.

it was determined that the recommended penalty for Violation No. 1 was inadvertently miscalculated on the Penalty Calculation Worksheet ("PCW").<sup>5</sup> The error was corrected to accurately reflect TCEQ's Penalty Policy for classification of similar violations.<sup>6</sup>

On March 12, 2010, a TCEQ enforcement coordinator Nadia Hameed ("Ms. Hameed") notified Respondent of the mistake in the penalty calculation and informed Respondent that an enhanced penalty resulted from the violation reclassification.<sup>7</sup> The violation events changed from a single potential minor event to seven quarterly potential moderate events, resulting in an increase in the penalty from one thousand four hundred fifty-nine dollars (\$1,459.00) to twenty three thousand six hundred thirty-five dollars (\$23,635.00).<sup>8</sup> Respondent refused to accept a new Proposed Order and insisted the original inaccurate version be presented for Commission approval. That request was denied. Neither the ED nor any of his representatives has signed the Proposed Order. The Commission has not signed the proposed order. The sole signatory on the Proposed Order is that of Respondent. Because no settlement was reached, the ED filed the Executive Director's Preliminary Report and Petition ("EDPRP").<sup>9</sup> A contested case hearing was requested and the Hearing on the Merits is scheduled for March 31, 2011. On February 8, 2011, Respondent submitted its Motion for Summary Disposition and Consolidated Motion to Enforce Settlement Agreement ("the Motions").<sup>10</sup>

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<sup>5</sup> ED Ex. 5, initial PCW with proposed penalty of \$1,459. Violation No. 1 in the proposed agreed order was inadvertently classified as a potential minor with one single violation event instead of potential moderate with seven quarterly events.

<sup>6</sup> ED Ex. 8, TCEQ Penalty Policy, September 2002, page 10. The violation was changed from potential minor to potential moderate due to the amount of operating hours Respondent operated below the minimum net heating value ( i.e 2,244 hours, which constituted 23 percent of total operating period of 9,669 hours).

<sup>7</sup> ED Ex. 3, Email from Ms. Hameed to Respondent.

<sup>8</sup> ED Ex. 3, Email from Ms. Hameed to Respondent. ED Ex. 6, modified PCW with proposed penalty of \$29,568, due to withdrawal of the 20% penalty deferral for an expedited settlement. A 20% deferral would result in a reduced penalty of \$23,635.

<sup>9</sup> ED Ex. 7, EDPRP.

<sup>10</sup> ED Ex. 4, Albemarle's Motion for Summary Disposition.

## II. SUMMARY OF ARGUMENT

It is the ED's position that Respondent is not entitled to a judgment on its Motion and that the Motion should be denied. The ED disputes Respondent's assertion that the Proposed Order is legally binding. The nature of the Proposed Order is such that any party could end the settlement negotiation before a final order is signed and approved by the Commission. "Commission" is defined in the TCEQ's rules to mean "the commissioners acting in their official capacity."<sup>11</sup> The Proposed Order specifically states that it is presented for settlement purposes only and is not final until final approval by the Commission.<sup>12</sup> Because the Order was not finally approved and issued by the Commission, the Order was not executed by the terms specified in the Order. Because it was not executed in accordance with its terms, no contract was formed and there is no contract to enforce.

The Order expressly allows the ED to pursue penalties not raised therein.<sup>13</sup> The ED raised additional penalties in its modified PCW, which Respondent rejected. Because Respondent rejected the ED's proposed settlement offer, the ED filed the EDPRP. The EDPRP contains the following genuine issues of material fact: whether Respondent failed to maintain the minimum net heating value of 300 BTU/scfm; whether Respondent failed to maintain required records; whether the recommended penalty amount of twenty nine thousand five hundred sixty-eight dollars (\$29,568.00) is appropriate and whether the recommended corrective actions are required. The ED requests that the ALJ deny Respondent's Motion.

## III. SUMMARY OF EVIDENCE FOR EXECUTIVE DIRECTOR'S RESPONSE

The ED relies on the following attachments in support of this Response:

- ED Ex. 1: Proposed Order mailed on November 13, 2009
- ED Ex. 2: Signed Proposed Order from Respondent

<sup>11</sup> 30 TEX. ADMIN. CODE § 3.2(8)

<sup>12</sup> ED Ex. 2, Respondent's signed proposed agreed order, page 2, "Jurisdiction and Stipulations: 8."

<sup>13</sup> ED Ex. 2, Respondent's signed proposed agreed order, page 3, "Ordering Provisions: 1." IV.

- ED Ex. 3: Email from Ms. Hameed regarding penalty increase
- ED Ex. 4: Respondent's Summary Disposition Motion and Brief in Support of Summary Disposition
- ED Ex. 5: Initial PCW with proposed penalty amount of \$1,459.00
- ED Ex. 6: Modified PCW with proposed penalty amount of \$29,568.00
- ED Ex. 7: EDPRP
- ED Ex. 8: TCEQ 2002 Penalty Policy

#### IV. STANDARD FOR SUMMARY DISPOSITION

The court may render a summary judgment for the moving party where "...there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law..."<sup>14</sup> The Supreme Court has clarified this standard by stating that the issue is not whether the summary judgment proof raises fact issues, but whether that proof establishes as a matter of law the Movant's right to judgment.<sup>15</sup> The Movant establishes a fact as a matter of law if it demonstrates that ordinary minds cannot differ on the conclusion to be deduced from the evidence.<sup>16</sup>

#### V. RESPONDENT'S STATEMENT OF FACTS AND THE ED'S RESPONSES

Genuine issues of material facts exist:

##### Respondent's Summary of Fact No. 1:

On November 13, 2009, Mr. Van Soest sent Albemarle a Notice of Enforcement ("Notice") and proposed agreed order related Albemarle's plant in Pasadena, Texas.

##### ED's Response to Summary of Facts No. 1:

The ED agrees with the Respondent's statement that the TCEQ sent the Proposed Order. However, Respondent omitted one critical fact, which is that the Proposed Order clearly stated the following **"Please note that any agreements we reach are subject to final approval by the Commission."**<sup>17</sup>

<sup>14</sup> Tex. R. Civ. P. 166a(c).

<sup>15</sup> Teer v. Duddlestone, 664 S.W. 2d 702, 703 (Tex. 1984).

<sup>16</sup> Sosa v. Williams, 936 S.W. 2d 708, 710 (Tex. App. - Waco 1996).

<sup>17</sup> ED Ex.1, Proposed Agreed Order, page 2 of the cover letter, emphasis added.

Respondent's Summary of Fact No. 2:

On January 8, 2010, Albemarle accepted the offer of settlement by executing the Proposed Order and remitting a check for \$1,459. The Commission cashed Albemarle's check on January 14, 2010.

ED's Response to Summary of Fact No. 2:

The ED did not sign the Proposed Order and neither has the Commission. TCEQ's cashier's office deposited Respondent's check upon receipt in accordance with the statutory requirement.<sup>18</sup>

Respondent's Summary of Fact No. 3:

On March 12, 2010, Ms. Hameed sent an email to Albemarle reneging the settlement agreement. Albemarle responded to the March 12, 2010 email by notifying Ms. Hameed that it expected the ED to honor the parties' settlement agreement by sending the proposed order to the Commission for approval as promised.

ED's Response to Summary of Fact No. 3:

The ED agrees that Ms. Hameed sent an email to Respondent on March 12, 2010. TCEQ Enforcement management discovered an error in the penalty calculation for Violation No. 1 and notified Respondent. Respondent refused to pay the modified penalty. Ms. Hameed did not renege on a settlement agreement since there is no agreement until the Proposed Order is signed by the ED and approved by the Commission. The ED cannot present an inaccurate Proposed Order to the Commission for approval.

Respondent's Summary of Fact No. 4:

On June 21, 2010, the ED filed the EDPRP, which directly violates the parties' agreement.

ED's Response to Summary of Fact No. 3:

The ED's filing of the EDPRP does not violate the parties' agreement since there was no agreement. The Proposed Order clearly stated that if settlement could not be reached, the ED would proceed with enforcement under the Commission's Enforcement rules, TEX. ADMIN. CODE ch. 70.<sup>19</sup> Respondent was aware that the ED may require penalties for violations which were not raised in the Proposed Order.<sup>20</sup>

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<sup>18</sup>TEX. GOVT. CODE § 404.094.

<sup>19</sup> ED Ex.1, Proposed Agreed Order, page 2 of the cover letter.

<sup>20</sup> ED Ex. 2, Respondent's signed Proposed Order, page 3, paragraph IV. The enhanced penalty in this case is based on seven quarterly violation events that were not raised in the original proposed Order signed by Respondent.

## VI. ARGUMENTS AND AUTHORITIES

Respondent's Motion contains a major flaw because it is based on the argument that the proposed penalty enhancement constitutes a breach of contract. This is flawed because there was no settlement agreement between the ED and Respondent. The ED and Respondent may reach an agreement in an enforcement action but such agreement must be approved and issued by the Commission or the ED in order to have a legal effect.<sup>21</sup> The ED and Respondent did not have an agreement because the Proposed Order was not approved and issued by the Commission or the ED. In the Motion, Respondent claims that the proposed Order is a valid, enforceable contract and, as such, the EDPRP should be dismissed. They cite to TexJur for the proposition that a settlement agreement constitutes an enforceable contract if there is: "[1] an offer to compromise, [2] a meeting of the minds of the parties, and [3] an unconditional acceptance within the time and on the terms offered."<sup>22</sup> Respondent's argument supports the ED's position that the Proposed Order at the very least does not meet criteria Nos. 2 and 3 above. Criterion No. 2 was not met because there could not have been a meeting of the minds if Respondent believed that signing the Proposed Order and paying the proposed penalty constituted an agreement; and if Respondent believed that its acceptance of the Proposed Order trumps the condition that "...any agreements are subject to final approval by the Commission."<sup>23</sup>

Respondent also argues that the ED is estopped from reneging on an agreement because "An offer of settlement becomes a binding contract when it is accepted by the other party according to its terms."<sup>24</sup> The ED agrees with Respondent's statement but disputes Respondent's interpretation of it. Texas courts interpret settlement agreements according to the rules applicable to contract interpretation.<sup>25</sup> The elements of a valid contract are: (1) an offer, (2) an acceptance, (3) a meeting of the minds, (4) each party's consent to the terms, and

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<sup>21</sup> 30 TEX. ADMIN. CODE § 70.10(a).

<sup>22</sup> 12 Tex. Jur. 3d Compromise and Settlement § 5 (2010).

<sup>23</sup> ED Ex.1, Proposed Agreed Order, page 2 of the cover letter.

<sup>24</sup> Petkovsek v. Board of Pardons and Paroles of State of Tex., 785 F. Supp. 82, 85 (E.D. Tex. 1992)

<sup>25</sup> Cities of Abilene v. Public Utility Com'n of Tex., 146 S.W.3d 742, 747 (Tex. App. - Austin, 2004)

(5) execution and delivery of the contract with the intent that it be mutual and binding.<sup>26</sup> Here, the third, fourth and fifth elements are lacking. This was a Proposed Order that was not executed and delivered with the intent that it be binding before it is approved by the Commission. Mr. Van Soest's intent, consistent with TCEQ policy, was to present the Proposed Order for further management review and signing by the ED. Clearly, there was no meeting of the minds if Respondent disregarded a critical condition of settlement, which is that Commission approval is required. When an agreement is reached, the ED publishes notice of the Proposed Order in the Texas Register, providing 30 days for public comment.<sup>27</sup> The ED has neither signed the Proposed Order nor published it for public comment, indicating that no agreement was reached.<sup>28</sup> Respondent is the sole signatory on the Proposed Order. Respondent's signed version of the Proposed Order is based on inadvertent penalty miscalculation.

Respondent cites a case stating that "An offer [of settlement] becomes a binding contract when it is accepted by the other party according to its terms."<sup>29</sup> The ED agrees. In *Petkovsek v. Board of Pardons and Paroles of State of Texas*, the court enforced a settlement agreement after an Assistant Attorney General ("Marshall") attempted to renege on grounds that the *unconditional* settlement agreement was contingent upon authorization of State Comptroller.<sup>30</sup> *Petkovsek* is distinguishable from the facts of this case mainly because in *Petkovsek*, Marshall's offer of settlement was *unconditional* whereas Mr. Van Soest offer was *conditional*. In *Petkovsek*, the Plaintiff filed suit to recover damages for personal injury and defamation allegedly caused by the Texas Board of Pardons and Paroles ("Board" or "Defendant").<sup>31</sup> Marshall, representing the Board, made an *unconditional* offer of settlement to the Plaintiff stating in a letter confirming the offer that she had the authority to settle all causes of action against the Board.<sup>32</sup> The settlement was

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<sup>26</sup> DeClaire v. G&B McIntosh Family Ltd. Partnership, 260 S.W.3d 34, 44 (Tex. App. - Houston [1 Dist.], 2008)

<sup>27</sup> 30 TEX. ADMIN. CODE § 70.10(c).

<sup>28</sup> ED Ex. 2, Respondent's signed proposed Agreed Order, page 6, signature page.

<sup>29</sup> *Petkovsek v. Board of Pardons and Paroles of State of Tex.*, 785 F. Supp. 82, 85 (E.D. Tex. 1992).

<sup>30</sup> *id.* at 83, emphasis added.

<sup>31</sup> *id.*

<sup>32</sup> *id.*, emphasis added.

announced to the court and the case was removed from the jury selection docket.<sup>33</sup> The court issued a deadline for the parties to submit all necessary closing paper to the court.<sup>34</sup> Marshall's letter of settlement to the Plaintiff did not contain any conditions for the settlement. It was after the *unconditional* settlement was accepted by the Plaintiff, after the settlement was announced to the court and after the case was removed from the jury selection docket that Marshall reneged on the agreement.<sup>35</sup> None of these final steps demonstrating conclusion of settlement occurred in this case.

In the case against Respondent, Mr. Van Soest made it clear in his cover letter to the Proposed Order that settlement of the case was contingent upon final approval by the Commission.<sup>36</sup> Mr. Van Soest did not attach this condition after Respondent signed the Proposed Order as was the case in *Petkovsek*. The court's decision enforcing the settlement agreement between Plaintiff and Defendant in *Petkovsek* was based on the express written language of Marshall's settlement offer, which was *unconditional*.<sup>37</sup> The court stated "The express written language of Marshall suggests a final settlement. Nowhere in her correspondence is there an indication that her offer was conditional and the settlement tentative."<sup>38</sup> The court concluded that Marshall had the authority to extend the *unconditional* offer of settlement to the Plaintiff and once the *unconditional* offer was accepted, the settlement was enforceable.<sup>39</sup> In the present case against Respondent, in order to have legal effect as an order of the agency, the Proposed Order must be approved and issued by the Commission or the ED.<sup>40</sup> The Proposed Order itself states this very clearly: "The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission."<sup>41</sup> The Commission never gave final approval and issuance to the Proposed Order. "When an offer prescribes the manner of

<sup>33</sup> *Petkovsek*, 785 F. Supp. at 83.

<sup>34</sup> *id.*

<sup>35</sup> *id.* at 84.

<sup>36</sup> ED Ex.1, Proposed Agreed Order, page 2 of the cover letter.

<sup>37</sup> *Petkovsek*, 785 F. Supp. at 85, emphasis added.

<sup>38</sup> *id.* at 85.

<sup>39</sup> *id.* at 86, emphasis added.

<sup>40</sup> 30 TEX. ADMIN. CODE § 70.10(a).

<sup>41</sup> ED Ex.1, proposed Agreed Order, Page 2, "Jurisdiction and Stipulations: 8"

acceptance, its terms in this respect must be complied with to create a contract."<sup>42</sup> Because the Order was never approved as prescribed by the Order and the Commission's rules, there was no enforceable contract.

Furthermore, assuming for argument's sake that the Proposed Order is an enforceable contract, it expressly provides that "the Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here."<sup>43</sup> That provision is directly applicable to this situation, where the ED is seeking an additional \$22,176.00 in penalties for seven quarterly events, subject to Commission approval, that were not raised in the proposed Order.<sup>44</sup>

## VII. CONCLUSION

Respondent's Motion fails to prove that the Proposed Order is an enforceable contract. The record shows that the Proposed Order was not finally approved and issued by the Commission. Approval and issuance by the Commission is one of the clearly prescribed elements of acceptance of the proposed Order. Because there was no meeting of the minds and the term of acceptance was not met, no contract was created. Therefore, there is no contract to enforce. Even if the Order is enforceable, it expressly allows the ED to seek additional penalties for violations not raised therein. The EDPRP contains a recommendation of seven quarterly events for violation No. 1, which was not included in the proposed Order.<sup>45</sup> Because Respondent has rejected the ED's proposed settlement offer, this matter must be resolved through a hearing on the merits because there are issues of material facts that exist.

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<sup>42</sup> Town of Lindsay v. Cooke County Elec. Coop. Ass'n., 502 S.W.2d 117, 118 (Tex. 1973).

<sup>43</sup> ED Ex.1, proposed Agreed Order, Page 3, "Ordering Provisions: 1"

<sup>44</sup> ED Ex. 6, modified PCW with proposed penalty of \$29,568.

<sup>45</sup> ED Ex. 7, EDPRP, attachment A, violation No. 1.

### VIII. PRAYER

For the above reasons, the ED respectfully requests that the ALJ deny Respondent's Motion for Summary Disposition, as well as Respondent's identical Consolidated Motion to Enforce Settlement Agreement.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.  
Executive Director

Stephanie Bergeron Perdue, Deputy Director  
Office of Legal Services

Kathleen C. Decker, Division Director  
Litigation Division



by \_\_\_\_\_

Laurencia N. Fasoyiro  
State Bar No. 24012885  
Litigation Division  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486  
(713) 422-8914  
(713) 422-8910 (fax)



**EXECUTIVE DIRECTOR'S EXHIBITS**

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**ED 1**



Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 13, 2009

**CERTIFIED MAIL – 7008 3230 0002 9592 7960**  
**RETURN RECEIPT REQUESTED**

Mr. Charles Seaton, Environmental Supervisor  
Albemarle Corporation  
2500 North South Street  
Pasadena, Texas 77503

Re: Notice of Enforcement Action  
Albemarle Corporation; RN100218247  
Docket No. 2009-1515-AIR-E; Enforcement Case No. 38347  
**FOR SETTLEMENT PURPOSES ONLY**

Dear Mr. Seaton:

The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") is pursuing an enforcement action against Albemarle Corporation for violations of the Texas Health & Safety Code and/or Commission Rules. These violations were discovered during an investigation conducted on July 30, 2009, through August 7, 2009, and documented in a letter dated August 31, 2009, from the TCEQ Houston Regional Office.

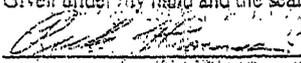
Please find enclosed a proposed agreed order which we have prepared in an attempt to expedite this enforcement action. The order assesses an administrative penalty of One Thousand Eight Hundred Twenty-Three Dollars (\$1,823). We are proposing a one time offer to defer Three Hundred Sixty-Four Dollars (\$364) of the administrative penalty if you satisfactorily comply with all the ordering provisions within the time frames listed. Therefore, the administrative penalty to be paid is One Thousand Four Hundred Fifty-Nine Dollars (\$1,459). The order also identifies the violations that we are addressing and identifies specific technical requirements necessary to resolve them.

If you have any questions regarding this matter, we are available to discuss them in a conference in Houston or over the telephone. If we reach agreement in a timely manner, the TCEQ will then proceed with the remaining procedural steps to settle this matter. These steps include publishing notice of the proposed order in the *Texas Register*, and scheduling the matter for the Commission's agenda. We believe that handling this matter expeditiously could save Albemarle Corporation and the TCEQ a significant amount of time, as well as the expense associated with litigation.

A copy of the order is provided for your files. Also enclosed for your convenience is a return envelope. If you agree with the order as proposed, please sign and return the original order and the penalty payment (check payable to "TCEQ" and referencing Albemarle Corporation, Docket No. 2009-1515-AIR-E) to:

STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify this is a true and correct copy of a Texas Commission on Environmental Quality (TCEQ) document, which is filed in the Records of the Commission. Given under my hand and the seal of office.

  
Rick Thomas, Custodian of Records  
Texas Commission on Environmental Quality

**FEB 23 2011**

**EXHIBIT**

REPLY TO: REGION 12 • 5425 POLK ST., STE. 1

2 • 713-767-3500 • FAX 713-767-3520

P.O. Box 13087 • Austin, Texas 78711

Internet address: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)

**ED-1**

Mr. Charles Seaton  
Page 2

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

Should you believe you are unable to pay the proposed administrative penalty, you may claim financial inability to pay part or all of the penalty amount. In order to qualify for financial inability to pay, the penalty must exceed \$3,600 and be greater than 1% of annual gross revenues. If this is the case, please contact us immediately to obtain a list of financial disclosure documents that must be submitted within 30 days of the receipt of this letter. These documents, once properly completed and submitted, will be thoroughly reviewed to determine if we agree with the claim of financial inability. Please be aware that if financial inability is proven to the satisfaction of staff, discussions pertaining to the penalty amount adjustment will focus only on deferral and not on waiver of the penalty amount. The Commission will make the final decision on the staff recommendation.

You may be able to perform or pay for a Supplemental Environmental Project ("SEP"), which is a project that benefits the environment, to offset a portion of your penalty. **If you are interested in performing a SEP, you must agree to the penalty amount and submit a SEP proposal within 30 days of receipt of this proposed order. For additional information about SEPs, please go to the TCEO's web site link at <http://www.tceq.state.tx.us/legal/sep/index.html> or contact the Enforcement Coordinator listed below.**

Please note that any agreements we reach are subject to final approval by the Commission.

If we cannot reach a settlement of this enforcement action or you do not wish to participate in this expedited process, we will proceed with enforcement under the Commission's Enforcement Rules, 30 TEX. ADMIN. CODE ch. 70. Specifically, if the signed order and penalty are not mailed and postmarked within 60 days from the date of this letter, your case will be forwarded to the Litigation Division and **this settlement offer, including the penalty deferral, will no longer be available.** If you would like to obtain a copy of 30 TEX. ADMIN. CODE ch. 70 or any other TCEQ rules, you may contact any of the sources listed in the enclosed brochure entitled *Obtaining TCEQ Rules*. The enforcement process described in 30 TEX. ADMIN. CODE ch. 70 requires the staff to prepare and issue an Executive Director's Preliminary Report and Petition to the Commission.

Mr. Charles Seaton  
Page 3

For any questions or comments about this matter or to arrange a meeting, please contact Ms. Nadia Hameed of my staff at 713-767-3629.

Sincerely,



*CV* David Van Soest, Manager  
Enforcement Division  
Texas Commission on Environmental Quality

DVS/nh

Enclosures: Proposed Agreed Order, File Copy, Return Envelope, *Obtaining TCEQ Rules*, Penalty Calculation Worksheet, Site Compliance History

cc: Ms. Linda Vasse, Manager, Air Section, Houston Regional Office, TCEQ  
CT Corporation System, 350 North Saint Paul Street, Dallas, Texas 75201

Mr. Charles Seaton  
Page 4

bcc: Ms. Nadia Hameed, Coordinator, Enforcement Division, MC Region 12  
Central Records, MC 213, Building E, 1st Floor, HG0225N  
Enforcement Division Reader File

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ALBEMARLE CORPORATION  
RN100218247

§ BEFORE THE  
§ TEXAS COMMISSION ON  
§ ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-1515-AIR-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Albemarle Corporation ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a chemical manufacturing plant at 2500 North South Street in Pasadena, Harris County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 5, 2009.
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 One Thousand Eight Hundred Twenty-Three Dollars (\$1,823) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Four Hundred Fifty-Nine Dollars (\$1,459) of the administrative penalty and Three Hundred Sixty-Four Dollars (\$364) is deferred

contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:
  - a. On June 16, 2009, revised procedures to better control the British Thermal Units per standard cubic feet per minute ("BTU/scfm") value of the process vents;
  - b. On June 18, 2009, revised the alarm and alert system to aid compliance; and
  - c. On August 13, 2009, a correct list of excluded components from the Leak Detection and Repair was provided.
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:

1. Failed to maintain the minimum net heating value of 300 BTU/scfm on Flare G-D-1, in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), 40 CODE OF FEDERAL REGULATIONS § 60.18(c)(3)(ii), Air Permit No. 69A, Special Condition ("SC") No. 4A, Air Permit No. 3962, SC No. 3, Air Permit No. 18114, SC No. 2, Federal Operating Permit ("FOP") No. 02285, Special Terms and Conditions 1A and 8, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 30, 2009, through August 7, 2009. Specifically, from February 1, 2006 through March 5, 2007, from March 7, 2007 through August 19, 2007 and on April 19, 2008, Flare G-D-1 was operated for a total period of 9,669 operating hours of which 2,244 hours (23 percent of the total operating time) were below the minimum net heating value.

During this time period no unauthorized emissions from Flare G-D-1 were documented. The lowest recorded net heating value was 58.22 BTU/scfm on April 17, 2006.

2. Failed to maintain records, in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), Air Permit No. 18114, SC No. 10A, FOP No. 02285, Special Terms and Conditions 8, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 30, 2009, through August 7, 2009. Specifically, the Respondent failed to provide and maintain the correct list of equipment components that were excluded from the Leak Detection and Repair monitoring program.

### 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: Albemarle Corporation, Docket No. 2009-1515-AIR-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, install a calorimeter on the flare to provide continuous readouts of the BTU/scfm values being sent to the Flare G-D-1; and
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. 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  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

\_\_\_\_\_  
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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Albemarle Corporation

\_\_\_\_\_  
Title

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

ED 2



CHISENHALL, NESTRUD & JULIAN, P.A.

ATTORNEYS AT LAW

REGIONS CENTER

400 WEST CAPITOL, SUITE 2840

LITTLE ROCK, ARKANSAS 72201

TELEPHONE (501) 372-5800

FAX (501) 372-4841

www.cnjlaw.com

January 8, 2010

**PRIVELEGED SETTLEMENT COMMUNICATIONS**

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

Re: Albemarle Corporation  
Docket No. 2009-1515-AIR-E; Enforcement Case 38347

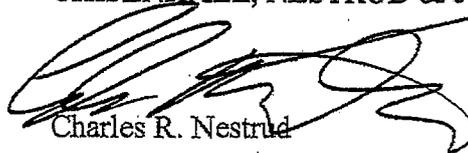
To Whom It May Concern:

Please see enclosed the original signed order and the penalty payment in the amount of One Thousand Four Hundred Fifty-Nine Dollars (\$1,459) for the above-referenced matter.

Should you have any questions or require additional information please do not hesitate to contact me.

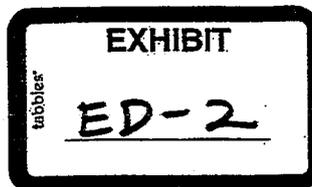
SINCERELY,

CHISENHALL, NESTRUD & JULIAN, P.A.



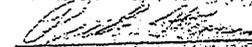
Charles R. Nestrud

CRN/seh



STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify this is a true and correct copy of a  
Texas Commission on Environmental Quality (TCEQ)  
document, which is filed in the Records of the Commission.  
Given under my hand and the seal of office.



FEB 23 2011  
Rick Thomas, Custodian of Records  
Texas Commission on Environmental Quality

TCEQ

11831

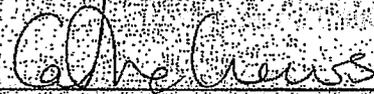
Albemarle

01/08/2010 1459.00

\$1,459.00

1/8/2010

Albemarle Corp, Docket 2009-1515-AIR-E

<b>CHISENHALL, NESTRUD &amp; JULIAN, P.A.</b> 400 WEST CAPITOL, SUITE 2840 LITTLE ROCK, AR 72201 (501) 972-5800		<b>CENTENNIAL BANK</b> 81-275-829	11831 TCEQ
PAY TO THE ORDER OF TCEQ	One thousand four hundred fifty-nine and NO/100	DOLLARS DATE January 08, 2010	AMOUNT \$1,459.00
		 AUTHORIZED SIGNATURE	

⑈011831⑈ ⑆082902957⑆ 4048180⑈

WCS 8 8 11-7

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ALBEMARLE CORPORATION  
RN100218247

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-1515-AIR-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Albemarle Corporation ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a chemical manufacturing plant at 2500 North South Street in Pasadena, Harris County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 5, 2009.
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 One Thousand Eight Hundred Twenty-Three Dollars (\$1,823) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Four Hundred Fifty-Nine Dollars (\$1,459) of the administrative penalty and Three Hundred Sixty-Four Dollars (\$364) is deferred

contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:
  - a. On June 16, 2009, revised procedures to better control the British Thermal Units per standard cubic feet per minute ("BTU/scfm") value of the process vents;
  - b. On June 18, 2009, revised the alarm and alert system to aid compliance; and
  - c. On August 13, 2009, a correct list of excluded components from the Leak Detection and Repair was provided.
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:

1. Failed to maintain the minimum net heating value of 300 BTU/scfm on Flare G-D-1, in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), 40 CODE OF FEDERAL REGULATIONS § 60.18(c)(3)(ii), Air Permit No. 69A, Special Condition ("SC") No. 4A, Air Permit No. 3962, SC No. 3, Air Permit No. 18114, SC No. 2, Federal Operating Permit ("FOP") No. 02285, Special Terms and Conditions 1A and 8, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 30, 2009, through August 7, 2009. Specifically, from February 1, 2006 through March 5, 2007, from March 7, 2007 through August 19, 2007 and on April 19, 2008, Flare G-D-1 was operated for a total period of 9,669 operating hours of which 2,244 hours (23 percent of the total operating time) were below the minimum net heating value.

During this time period no unauthorized emissions from Flare G-D-1 were documented. The lowest recorded net heating value was 58.22 BTU/scfm on April 17, 2006.

2. Failed to maintain records, in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), Air Permit No. 18114, SC No. 10A, FOP No. 02285, Special Terms and Conditions 8, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 30, 2009, through August 7, 2009. Specifically, the Respondent failed to provide and maintain the correct list of equipment components that were excluded from the Leak Detection and Repair monitoring program.

### 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: Albemarle Corporation, Docket No. 2009-1515-AIR-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, install a calorimeter on the flare to provide continuous readouts of the BTU/scfm values being sent to the Flare G-D-1; and
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. 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  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

\_\_\_\_\_  
Date

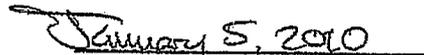
I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for 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:

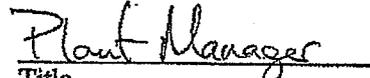
- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement 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

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Ablemarle Corporation

  
\_\_\_\_\_  
Title

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

**ED 3**



From: Bryan Sinclair  
To: Hameed, Nadia, Wheeler, Sidney  
CC: Clark, Laura, Brulloths, Anna  
Date: 3/12/2010 4:59 PM  
Subject: Re: Fwd: FW: Albemarle-Notice of Enforcement Case No. 38347;Docket2009-1515-AIR-E

You may respond to him, but he is also welcome to contact me.  
Mr. Nestrud is correct – this is unusual. The explanation is that, in the review of this case prior to being scheduled for the Commission to consider, senior management concluded that the penalty calculation needed to be changed to reflect classification of the penalty to "potential moderate." Senior management reviews all settled proposed orders prior to agenda, and their approval is necessary to take the proposed order before the Commission. The Commission must approve the order before it is finalized, and occasionally they require revisions to orders before they will approve it.

Please have Mr. Nestrud contact me if he has questions or wants to discuss further.  
Thanks

—Original Message—

From: Nadia Hameed  
Cc: Clark, Laura <LCLARK@tceq.state.tx.us>  
Cc: Brulloths, Anna <ABrulloth@tceq.state.tx.us>  
To: Sinclair, Bryan <BSinclair@tceq.state.tx.us>  
To: Wheeler, Sidney <SWHEELER@tceq.state.tx.us>

Sent: 3/12/2010 4:39:54 PM  
Subject: Fwd: FW: Albemarle-Notice of Enforcement Case No. 38347;Docket2009-1515-AIR-E

STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify this is a true and correct copy of a Texas Commission on Environmental Quality (TCEQ) document, which is filed in the Records of the Commission. Given under my hand and the seal of office.

*Rick Thomas*  
Rick Thomas, Custodian of Records  
Texas Commission on Environmental Quality  
FEB 23 2011

Bryan/Sidney:  
I just received this from Chuck Nestrud, the attorney for Albemarle. Please let me know if you would like to respond to him directly, thanks,  
nadia

>>> Chuck Nestrud <CNestrud@cnjlaw.com > 3/12/2010 4:11 PM >>>  
On January 8, 2010 I resolved the referenced matter with you, sent you the signed Agreed Order TCEQ had proposed, along with the check. (See attachment and email below) I have now been told that you sent another email (see below) to my client asking for more penalty. I find this very unusual. Can you provide an explanation? Thank you. Chuck Nestrud

Dear Mr. Hawkes and Mr. Seaton:  
Further to our conversation earlier today, I am attaching a copy of the revised penalty calculation worksheet (pcw) as well as the original one that was sent to you in November 2009.

My upper management has determined that violation #1 needs to be changed from potential minor to potential moderate. Also, the violation events have to be changed from 1 single event to 7 quarterly events (based on violation days = 563). The payable penalty amount has now increased from \$1,459 to \$23,635 (an additional \$22,176).

Please let me know if you are agreeable to paying this additional \$22,176. The case is coming close to agenda so at the most we can give you a couple of weeks to settle. Please let me know if you will be able to accommodate this request.

Thank-you for your cooperation in this matter,  
Nadia Hameed  
713-767-3629

Charles R. Nestrud  
cnestrud@cnjlaw.com  
Chisenhall, Nestrud & Julian, P.A.  
400 W. Capitol, Suite 2840  
Little Rock, AR 72201  
Phone: 501-372-5800  
Fax: 501-372-4941

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—Original Message—

From: Chuck Nestrud  
Sent: Friday, January 08, 2010 10:02 AM  
To: 'Nadia Hameed'  
Subject: RE: Albemarle-Notice of Enforcement Case No. 38347; Docket2009-1515-AIR-E

EXHIBIT  
ED-3  
tabbles

Thank you for your prompt response. The signed order and penalty is being over-nighted today. A copy is attached. Chuck

Charles R. Nestrud  
cnestrud@cnjlaw.com  
Chisenhall, Nestrud & Julian, P.A.  
400 W. Capitol, Suite 2840  
Little Rock, AR 72201  
Phone: 501-372-5800  
Fax: 501-372-4941

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-----Original Message-----

From: Nadia Hameed [mailto:NHameed@tceq.state.tx.us]  
Sent: Thursday, January 07, 2010 8:07 AM  
To: Chuck Nestrud  
Subject: Re: Albemarle-Notice of Enforcement Case No. 38347; Docket2009-1515-AIR-E

This is correct, but my understanding is that you will also be keeping other records required by the rules to show compliance, thanks, Nadia Hameed  
713-767-3629

>>> Chuck Nestrud <CNestrud@cnjlaw.com > 01/06/10 3:15 PM >>>

Thank you for discussing the proposed agreed order. As I read the order, in addition to paying the proposed penalty, Albemarle's only responsibility is to install a calorimeter on the flare that is capable of providing continuous readouts of the BTU/sofm values, and to certify the installation within 45 days of the effective date (estimated to be approximately 9-120 days from now). The order does not include any recordkeeping requirements or other compliance requirements. Could you please confirm that this is also your understanding of the requirements of the order? Thank you, Chuck Nestrud

Charles R. Nestrud  
cnestrud@cnjlaw.com <mailto:cnestrud@cnjlaw.com >  
Chisenhall, Nestrud & Julian, P.A.  
400 W. Capitol, Suite 2840  
Little Rock, AR 72201  
Phone: 501-372-5800  
Fax: 501-372-4941

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**ED 4**



CHISENHALL, NESTRUD & JULIAN, P.A.

ATTORNEYS AT LAW  
REGIONS CENTER  
400 WEST CAPITOL, SUITE 2840  
LITTLE ROCK, ARKANSAS 72201  
TELEPHONE (501) 372-5800  
FAX (501) 372-4941

www.cnjlaw.com

February 8, 2011

Laurencia N. Fasoyiro  
Attorney Litigation Division  
Texas Department on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, TX 78711-3087

Re: Albemarle Corporation; RN100211523  
TCEQ Docket No. 2009-0583-AIR-E

Dear Ms. Laurencia:

Enclosed, please find Albemarle Corporation's Motion for Summary Disposition and Brief in Support of Summary Disposition in the referenced matter.

If you have any questions or require additional information, please do not hesitate to contact me at 501-372-5800.

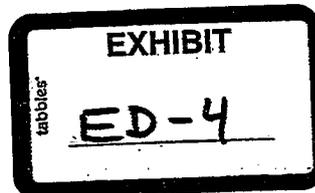
Yours very truly,

CHISENHALL, NESTRUD & JULIAN, P.A.



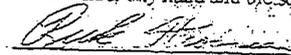
Sarah Hammett  
Legal Assistant to Charles R. Nestrud

CRN/seh



STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify this is a true and correct copy of a  
Texas Commission on Environmental Quality (TCEQ)  
document, which is filed in the Records of the Commission  
Given under my hand and the seal of office.

 FEB 23 2011

Nick Thomas, Custodian of Records  
Texas Commission on Environmental Quality

TCEQ DOCKET NO. 2009-1515-AIR-E

IN THE MATTER OF AN )  
ENFORCEMENT ACTION AGAINST )  
ALBEMARLE CORPORATION )  
RN100218247 )  
)  
)  
)

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

ALBEMARLE CORPORATION'S MOTION FOR SUMMARY DISPOSITION

COMES NOW, The Respondent, Albemarle Corporation, and for its Motion for Summary Disposition, ("Motion") submitted pursuant to Rule 80.137 of the Texas Administrative Code states that:

Respondent, Albemarle Corporation ("Albemarle"), has already entered into a binding settlement agreement with the Executive Director which disposes of this controversy. Through his Preliminary Report and Petition Recommending that the Commission Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Albemarle Corporation (the "EDPRP"), the Executive Director attempts to renege on that settlement agreement. This Commission should not allow the Executive Director to renege on the parties' settlement agreement, but should instead enforce the settlement agreement by adopting the parties' proposed agreed order and dismissing the EDPRP. This Motion is supported by Affidavits of Michael Brown and Charles Nestrud attached and incorporated herein.<sup>1</sup>

<sup>1</sup> The Motion for Summary Disposition and Brief in Support of Motion for Summary Disposition is identical to Albemarle's Consolidated Motion To Enforce Settlement Agreement and Memorandum of Law in Support Thereof.

Respectfully submitted,

CHISENHALL, NESTRUD & JULIAN, P.A.  
400 W. Capitol, Suite 2840  
Little Rock, Arkansas 72201  
(501) 372-5800

By: /s/ Charles R. Nestrud  
Charles R. Nestrud, AR BAR #77095  
*Attorneys for Respondent,*  
*Albemarle Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on 8 of February, 2011, a true and correct copy of the foregoing was delivered via First Class Mail, postage paid, to:

LaDonna Castanuela, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, TX 78711-3087

Blas J. Coy, Jr., Public Interest Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 103  
Austin, TX 78711-3087

Mark R. Vickery, P.G., Executive Director  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 109  
Austin, TX 78711-3087

/s/ Charles R. Nestrud  
Charles R. Nestrud

TCEQ DOCKET NO. 2009-1515-AIR-E

IN THE MATTER OF AN )  
ENFORCEMENT ACTION AGAINST )  
ALBEMARLE CORPORATION )  
RN100218247 )  
 )  
 )

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

ALBEMARLE CORPORATION'S BRIEF IN SUPPORT OF MOTION FOR  
SUMMARY DISPOSITION

FACTS

On November 13, 2009, David Van Soest, the Manager of the Enforcement Division of the Texas Commission on Environmental Quality ("the Commission"), sent Albemarle a Notice of Enforce Action ("Notice") related to Albemarle's plant in Pasadena, Texas ("the Plant"). Brown Aff. Ex. A. The Notice contained the following settlement offer:

Please find enclosed a proposed agreed order which we have prepared in an attempt to expedite this enforcement action. The order assesses an administrative penalty of One Thousand Eight Hundred Twenty-Three Dollars (\$1,823). We are proposing a one time offer to defer Three Hundred Sixty-Four Dollars (\$364) of the administrative penalty if you satisfactorily comply with all the ordering provisions within the time frames listed. Therefore, the administrative penalty to be paid is One Thousand Four Hundred Fifty-Nine Dollars (\$1,459). The order also identifies the violations that we are addressing and indentifies specific technical requirements necessary to resolve them. . .

If we reach agreement in a timely manner, the TCEQ will then proceed with the remaining procedural steps to settle this matter. . . .

If you agree with the order as proposed, please sign and return the original order and the penalty payment. . .

If the signed order and penalty are not mailed and postmarked within 60 days from the date of this letter, your case will be forwarded to the Litigation Division and this settlement offer, including penalty deferral, will no longer be available.

On January 8, 2010, Albemarle accepted the offer of settlement by executing the Proposed Agreed Order and remitting a check for \$1,459. **Brown Aff., Ex. B.** The Commission cashed Albemarle's check on January 14, 2010. **Brown Aff., Ex. B.** Albemarle also installed the calorimeter called for in the technical requirement section of the Proposed Agreed Order at a cost of \$ 238,000. *Id.*

On March 12, 2010, another member of the Enforcement Division, Nadia Hameed, sent the following email to Albemarle announcing that the Executive Director had decided to renege on the settlement agreement:

I am attaching a copy of the revised penalty calculation worksheet as well as the original one that was sent to you in November, 2009. My upper management has determined that violation #1 needs to be changed from potential minor to potential moderate. Also, the violation events have to be changed from 1 single event to 7 quarterly events (based on violation day =563). The payable penalty amount has now increased from \$1,459 to \$23, 635 (an additional \$22,176). . . . The case is coming close to agenda so the most we can give you [is] a couple of weeks to settle.

**Nestrud Aff., Exh. A.**

Albemarle responded to the March 12, 2010 email by notifying Ms. Hameed that it expected the Executive Director to honor the parties' settlement agreement by sending the proposed order to the Commission for approval as promised.

**Nestrud Aff. Exh. B.**

On June 21, 2010, the Executive Director filed the instant EDPRP, which directly violates the parties' settlement agreement.

#### ARGUMENT

Compromise and settlement agreements are subject to the general principles of the law of contracts. *Stewart v. Mathes*, 528 S.W.2d 116, 119 (Tex. Civ. App. 1975). A settlement agreement constitutes an enforceable contract if there is: "[1] an offer to

compromise, [2] a meeting of the minds of the parties, and an [3] unconditional acceptance within the time and on the terms offered.” 12 TEX. JUR. 3D *Compromise and Settlement* § 5 (2010) (citing *McLean v. Randell*, 135 S.W. 1116 (Tex. Civ. App. 1911); *Applewhite v. Sessions*, 114 S.W.2d 289 (Tex. Civ. App. Beaumont 1938); *Montanaro v. Montanaro*, 946 S.W.2d 428 (Tex. App. Corpus Christi 1997); *Gwynn v. Corpus Christi Bank & Trust*, 580 S.W.2d 902 (Tex. Civ. App. Corpus Christi 1979); and *McDonald v. Grey*, 1867 WL 4483 (Tex. 1867)). “[A] settlement agreement once entered into cannot be repudiated by either party and will be summarily enforced.” *Cia Anon Venezolana De Navegacion v. Harris*, 374 F.2d 33, 35 (5th Cir. 1967).

Moreover, principles of estoppel prevent a government agency from renegeing on a settlement agreement after the opposing party has taken actions in reliance upon that settlement agreement. *Southwestern Bell Telephone Co. v. N.L.R.B.* 667 F.2d 470, 476 (5th Cir. 1982) (holding that the National Labor Relations Board was estopped from collecting penalty against employer when actions of employer were covered by settlement agreement). “An offer [of settlement] becomes a binding contract when it is accepted by the other party according to its terms. After it is accepted, it cannot be withdrawn.” *Petkovsek v. Board of Pardons and Paroles of State of Tex.*, 785 F. Supp. 82, 85 (E.D. Tex. 1992) (quotations omitted) (enforcing settlement agreement after Attorney General attempted to renege on grounds that settlement was contingent upon authorization of State Comptroller). As noted by the court in *Petkovsek*, public policy favors the enforcement of settlement agreements voluntarily entered into by a state agency. *Id.* If government agencies are allowed to unilaterally walk away from their settlement agreements, then respondents “could never rely on the word” of their

government opponents, thus removing the incentive for a party to settle a case involving the government. *Id.*

Clearly, all the elements of an enforceable settlement agreement are present in this case. The Notice sent by the Executive Director<sup>1</sup> contained "a one-time offer" to compromise and settle this action. *See Brown Aff., Ex. A.* Albemarle unconditionally accepted the Executive Director's offer by sending a check and executing the Proposed Agreed Order within the 60 day-deadline imposed by the Notice. *Id.* A meeting of the minds was reached as evidenced by the clear language of the Notice and the Proposed Agreed Order. An enforceable settlement contract has been reached, and principles of estoppel prevent the Executive Director from unilaterally canceling that contract.

Although the Executive Director has thus far failed to explain the reason he has attempted to renege on the settlement agreement, it is likely he will argue that the Texas Administrative Code ("the Administrative Code") gives him the authority to unilaterally withdraw from a settlement before it is approved by the Commission. Such an argument would be mistaken.

The Administrative Code does not allow the Executive Director to make settlement offers, collect and cash settlement checks, and then renege on settlement agreements. Instead, the Administrative Code provides for an orderly process for the settlement of enforcement actions. The first step in that process is that the Executive Director and a respondent reach a settlement agreement by agreeing to a proposed agreed order. 30 TEX. ADMIN. CODE § 70.10(a). When the Executive Director and the

---

<sup>1</sup> Under the Administrative Code, "Executive Director" is defined as "[t]he executive director of the commission, or any authorized individual designated to act for the executive director." 30 TEX. ADMIN. CODE § 3.2(16).

respondent reach an agreement upon a proposed agreed order, "the executive director shall publish notice of the proposed agreed order in the *Texas Register*, providing 30 days for public comment." 30 TEX. ADMIN. CODE § 70.10(c). "Once the notice of proposed agreed order is published, the executive director shall file the agreed order with the chief clerk," who then submits the proposed order to the Commission for approval.

*Id.*

Nothing in the Administrative Code allows the Executive Director to unilaterally renege on a settlement agreement. On the contrary, the statute clearly provides that the Executive Director must ("shall") publish the proposed agreed order and submit it for Commission approval once the parties reach an agreed resolution of the matter. *Id.*

Similarly, nothing in the Administrative Code allows the Commission to reject a binding settlement agreement based solely upon the Executive Director's change of heart many months after the Commission has cashed a respondent's settlement check.

The Executive Director agreed that if Albemarle would pay a fine of \$1,459, install a calorimeter, and execute the Proposed Agree Order, "the TCEQ will then proceed with the remaining procedural steps to settle this matter. . . ." **Brown Aff., Ex. A.** Albemarle has performed its part of the settlement contract, and the Executive Director is now legally bound by principles of contract law and estoppel to do the same. Therefore, the Commission should adopt enforce the parties' settlement agreement by approving the Proposed Agreed Order and dismissing the EDPRP.

---

CONCLUSION

Respondent, Albemarle Corporation, requests that the Commission enforce the parties' settlement agreement by approving the Proposed Agreed Order and dismissing the EDPRP.

Respectfully submitted,

CHISENHALL, NESTRUD & JULIAN, P.A.  
400 W. Capitol, Suite 2840  
Little Rock, Arkansas 72201  
(501) 372-5800

By: /s/ Charles R. Nestrud  
Charles R. Nestrud, AR BAR #77095  
*Attorneys for Respondent,  
Albemarle Corporation.*

---

CERTIFICATE OF SERVICE

I hereby certify that on 8<sup>th</sup> of February, 2011, a true and correct copy of the foregoing was delivered via First Class Mail, postage paid, to:

LaDonna Castanuela, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, TX 78711-3087

Blas J. Coy, Jr., Public Interest Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 103  
Austin, TX 78711-3087

Mark R. Vickery, P.G., Executive Director  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 109  
Austin, TX 78711-3087

/s/ Charles R. Nestrud  
Charles R. Nestrud

TCEQ DOCKET NO. 2009-1515-AIR-E

IN THE MATTER OF AN )  
ENFORCEMENT ACTION AGAINST )  
ALBEMARLE CORPORATION )  
RN100218247 )

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AFFIDAVIT IN SUPPORT OF ALBEMARLE CORPORATION'S OF MOTION FOR  
SUMMARY DISPOSITION

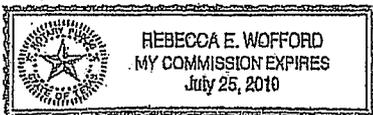
1. My name is Michael Brown. I am the Plant Manager of Albemarle Corporation ("Albemarle"). I make this affidavit based upon my personal knowledge.
2. On November 13, 2009, an individual designated to act for the Executive Director of the Texas Commission on Environmental Quality ("the Commission"), sent Albemarle a Notice of Enforce Action ("Notice") related to Albemarle's plant in Pasadena, Texas ("the Plant"). Attached as Exhibit "A".
3. In the Notice, the Executive Director offered to settle the matter related to the Plant in exchange for Albemarle's agreement to (1) execute a Proposed Agreed Order and (2) pay \$1,459.
4. On January 8, 2010, Albemarle sent the Commission an executed copy of the Proposed Agreed Order and a check for \$1,459. The Commission cashed Albemarle's check on January 14, 2010. Attached as Exhibit "B".
5. The Proposed Agreed Order called for Albemarle to install a calorimeter in its Plant.
6. On December 2, 2010, Albemarle completed the installation of the calorimeter in its Plant at a cost of \$238,000.00.

Michael E. Hofford

SUBSCRIBED AND SWORN to before me, a notary public, on this 8<sup>th</sup> day of July 2010.

Rebecca E. Hofford  
Notary Public

My Commission Expires:  
July 25, 2010



Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 13, 2009

**CERTIFIED MAIL - 7008 3230 0002 9592 7960**  
**RETURN RECEIPT REQUESTED**

Mr. Charles Seaton, Environmental Supervisor  
Albemarle Corporation  
2500 North South Street  
Pasadena, Texas 77503

RECEIVED  
ALBEMARLE CORP  
HOUSTON PLANT

NOV 18 2009

ENVIRONMENTAL CONTROL

Re: Notice of Enforcement Action  
Albemarle Corporation; RN100218247  
Docket No. 2009-1515-AIR-E; Enforcement Case No. 38347  
**FOR SETTLEMENT PURPOSES ONLY**

Dear Mr. Seaton:

The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") is pursuing an enforcement action against Albemarle Corporation for violations of the Texas Health & Safety Code and/or Commission Rules. These violations were discovered during an investigation conducted on July 30, 2009, through August 7, 2009, and documented in a letter dated August 31, 2009, from the TCEQ Houston Regional Office.

Please find enclosed a proposed agreed order which we have prepared in an attempt to expedite this enforcement action. The order assesses an administrative penalty of One Thousand Eight Hundred Twenty-Three Dollars (\$1,823). We are proposing a one time offer to defer Three Hundred Sixty-Four Dollars (\$364) of the administrative penalty if you satisfactorily comply with all the ordering provisions within the time frames listed. Therefore, the administrative penalty to be paid is One Thousand Four Hundred Fifty-Nine Dollars (\$1,459). The order also identifies the violations that we are addressing and identifies specific technical requirements necessary to resolve them.

If you have any questions regarding this matter, we are available to discuss them in a conference in Houston or over the telephone. If we reach agreement in a timely manner, the TCEQ will then proceed with the remaining procedural steps to settle this matter. These steps include publishing notice of the proposed order in the *Texas Register*, and scheduling the matter for the Commission's agenda. We believe that handling this matter expeditiously could save Albemarle Corporation and the TCEQ a significant amount of time, as well as the expense associated with litigation.

A copy of the order is provided for your files. Also enclosed for your convenience is a return envelope. If you agree with the order as proposed, please sign and return the original order and the penalty payment (check payable to "TCEQ" and referencing Albemarle Corporation, Docket No. 2009-1515-AIR-E) to:

REPLY TO: REGION 12 • 5425 POLK ST., ST.

P.O. Box 15087 • Austin, Texas 78711

EXHIBIT

A

52 • 713-767-3500 • FAX 713-767-3520

Internet address: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)

Mr. Charles Seaton  
Page 2

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

Should you believe you are unable to pay the proposed administrative penalty, you may claim financial inability to pay part or all of the penalty amount. In order to qualify for financial inability to pay, the penalty must exceed \$3,600 and be greater than 1% of annual gross revenues. If this is the case, please contact us immediately to obtain a list of financial disclosure documents that must be submitted within 30 days of the receipt of this letter. These documents, once properly completed and submitted, will be thoroughly reviewed to determine if we agree with the claim of financial inability. Please be aware that if financial inability is proven to the satisfaction of staff, discussions pertaining to the penalty amount adjustment will focus only on deferral and not on waiver of the penalty amount. The Commission will make the final decision on the staff recommendation.

You may be able to perform or pay for a Supplemental Environmental Project ("SEP"), which is a project that benefits the environment, to offset a portion of your penalty. If you are interested in performing a SEP, you must agree to the penalty amount and submit a SEP proposal within 30 days of receipt of this proposed order. For additional information about SEPs, please go to the TCEQ's web site link at <http://www.tceq.state.tx.us/legal/sep/index.html> or contact the Enforcement Coordinator listed below.

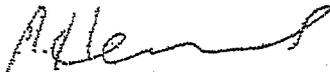
Please note that any agreements we reach are subject to final approval by the Commission.

If we cannot reach a settlement of this enforcement action or you do not wish to participate in this expedited process, we will proceed with enforcement under the Commission's Enforcement Rules, 30 TEX. ADMIN. CODE ch. 70. Specifically, if the signed order and penalty are not mailed and postmarked within 60 days from the date of this letter, your case will be forwarded to the Litigation Division and this settlement offer, including the penalty deferral, will no longer be available. If you would like to obtain a copy of 30 TEX. ADMIN. CODE ch. 70 or any other TCEQ rules, you may contact any of the sources listed in the enclosed brochure entitled *Obtaining TCEQ Rules*. The enforcement process described in 30 TEX. ADMIN. CODE ch. 70 requires the staff to prepare and issue an Executive Director's Preliminary Report and Petition to the Commission.

Mr. Charles Seaton  
Page 3

For any questions or comments about this matter or to arrange a meeting, please contact Ms. Nadia Hameed of my staff at 713-767-3629.

Sincerely,



*CV* David Van Soest, Manager  
Enforcement Division  
Texas Commission on Environmental Quality

DVS/nh

Enclosures: Proposed Agreed Order, File Copy, Return Envelope, *Obtaining TCEQ Rules*, Penalty Calculation Worksheet, Site Compliance History

cc: Ms. Linda Vasse, Manager, Air Section, Houston Regional Office, TCEQ  
CT Corporation System, 350 North Saint Paul Street, Dallas, Texas 75201

CHISENHALL, NESTRUD & JULIAN, P.A.  
ATTORNEYS AT LAW  
REGIONS CENTER  
400 WEST CAPITOL, SUITE 2840  
LITTLE ROCK, ARKANSAS 72201  
TELEPHONE (501) 372-5600  
FAX (501) 372-4841

www.crlaw.com

January 8, 2010

PRIVILEGED SETTLEMENT COMMUNICATIONS

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

Re: Albemarle Corporation  
Docket No. 2009-1515-AIR-E; Enforcement Case 38347

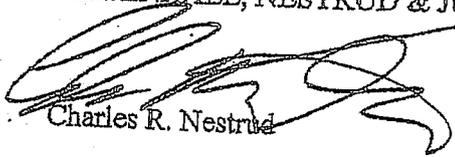
To Whom It May Concern:

Please see enclosed the original signed order and the penalty payment in the amount of One Thousand Four Hundred Fifty-Nine Dollars (\$1,459) for the above-referenced matter.

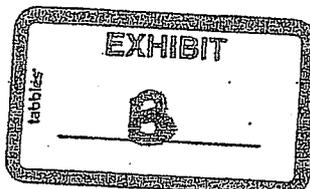
Should you have any questions or require additional information please do not hesitate to contact me.

SINCERELY,

CHISENHALL, NESTRUD & JULIAN, P.A.

  
Charles R. Nestrud

CRN/seh



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ALBEMARLE CORPORATION  
RN100218247

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-1515-AIR-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Albemarle Corporation ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a chemical manufacturing plant at 2500 North South Street in Pasadena, Harris County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 5, 2009.
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 One Thousand Eight Hundred Twenty-Three Dollars (\$1,823) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Four Hundred Fifty-Nine Dollars (\$1,459) of the administrative penalty and Three Hundred Sixty-Four Dollars (\$364) is deferred

- contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
  8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
  9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:
    - a. On June 16, 2009, revised procedures to better control the British Thermal Units per standard cubic feet per minute ("BTU/scfm") value of the process vents;
    - b. On June 18, 2009, revised the alarm and alert system to aid compliance; and
    - c. On August 13, 2009, a correct list of excluded components from the Leak Detection and Repair was provided.
  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:

1. Failed to maintain the minimum net heating value of 300 BTU/scfm on Flare G-D-1, in violation of 30 TEX. ADMIN. CODE §§ 116.115(e) and 122.143(4), 40 CODE OF FEDERAL REGULATIONS § 60.18(e)(3)(ii), Air Permit No. 69A, Special Condition ("SC") No. 4A, Air Permit No. 3962, SC No. 3, Air Permit No. 18114, SC No. 2, Federal Operating Permit ("FOP") No. 02285, Special Terms and Conditions 1A and 8, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 30, 2009, through August 7, 2009. Specifically, from February 1, 2006 through March 5, 2007, from March 7, 2007 through August 19, 2007 and on April 19, 2008, Flare G-D-1 was operated for a total period of 9,669 operating hours of which 2,244 hours (23 percent of the total operating time) were below the minimum net heating value.

During this time period no unauthorized emissions from Flare G-D-1 were documented. The lowest recorded net heating value was 58.22 BTU/scfm on April 17, 2006.

2. Failed to maintain records, in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), Air Permit No. 18114, SC No. 10A, FOP No. 02285, Special Terms and Conditions 8, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 30, 2009, through August 7, 2009. Specifically, the Respondent failed to provide and maintain the correct list of equipment components that were excluded from the Leak Detection and Repair monitoring program.

### 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: Albemarle Corporation, Docket No. 2009-1515-AIR-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, install a calorimeter on the flare to provide continuous readouts of the BTU/scfm values being sent to the Flare G-D-1; and
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. 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  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

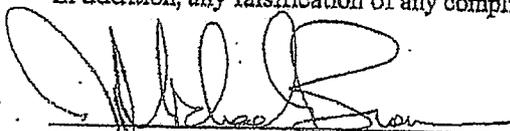
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Date

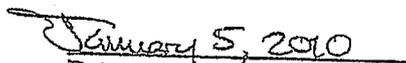
I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for 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

  
\_\_\_\_\_  
Date

J. Michael Brown  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Albemarle Corporation

Plant Manager  
\_\_\_\_\_  
Title

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

TCEQ

11831

Albemarle

01/08/2010 1459.00

\$1,459.00

1/8/2010

Albemarle Corp, Docket 2009-1515-AIR-E

CHISENHALL, NESTRUD & JULIAN, P.A. 400 WEST CAPITOL SUITE 2840 LITTLE ROCK, AR 72201 (501) 372-5800		CENTENNIAL BANK 81-275-829	TCEQ 11831
PAY TO THE ORDER OF	One thousand four hundred fifty-nine and NO/100	DATE	AMOUNT
TCEQ		January 08, 2010	\$1,459.00
		 AUTHORIZED SIGNATURE	

⑈011831⑈ ⑆082902757⑆ 4048180⑈

TCEQ DOCKET NO. 2009-1515-AIR-E

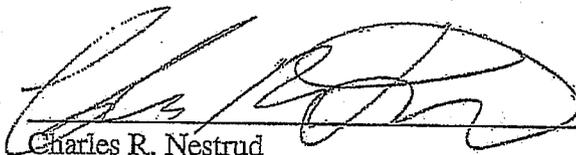
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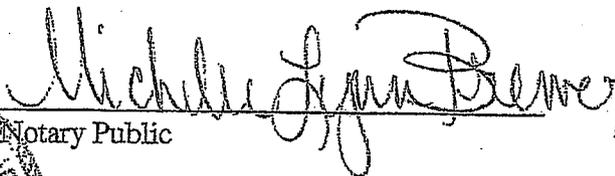
**AFFIDAVIT IN SUPPORT OF ALBEMARLE CORPORATION'S MOTION TO  
DISMISS/ENFORCE SETTLEMENT AGREEMENT**

1. My name is Charles R. Nestrud. I am counsel of Albemarle Corporation ("Albemarle"). I make this affidavit based upon my personal knowledge.

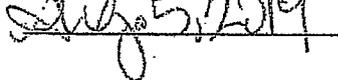
2. Attached hereto as Exhibit A and B are true and exact copies of emails exchanged with Nadia Hameed, counsel, Texas Commission on Environmental Quality ("The Commission")

  
Charles R. Nestrud

SUBSCRIBED AND SWORN to before me, a notary public, on this 8th day of February 2011.

  
Michelle Lynn Brewer  
Notary Public

My Commission Expires:





## Chuck Nestrud

---

**From:** Chuck Nestrud  
**Sent:** Friday, March 12, 2010 4:11 PM  
**To:** 'Nadia Hameed'  
**Subject:** FW: Albemarle-Notice of Enforcement Case No. 38347; Docket2009-1515-AIR-E  
**Attachments:** ltr to TCEQ reAgreed Order- Docket 09-1515-AIR-E.PDF

On January 8, 2010 I resolved the referenced matter with you, sent you the signed Agreed Order TCEQ had proposed, along with the check. (See attachment and email below) I have now been told that you sent another email (see below) to my client asking for more penalty. I find this very unusual. Can you provide an explanation? Thank you. Chuck Nestrud

Dear Mr. Hawkes and Mr. Seaton:

Further to our conversation earlier today, I am attaching a copy of the revised penalty calculation worksheet (pcw) as well as the original one that was sent to you in November 2009.

My upper management has determined that violation #1 needs to be changed from potential minor to potential moderate. Also, the violation events have to be changed from 1 single event to 7 quarterly events (based on violation days = 563). The payable penalty amount has now increased from \$1,459 to \$23,635 (an additional \$22,176).

Please let me know if you are agreeable to paying this additional \$22,176. The case is coming close to agenda so at the most we can give you a couple of weeks to settle. Please let me know if you will be able to accommodate this request.

Thank-you for your cooperation in this matter, Nadia Hameed  
713-767-3629

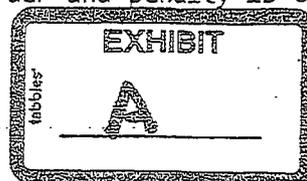
Charles R. Nestrud  
[cnestrud@cnjlaw.com](mailto:cnestrud@cnjlaw.com)  
Chisenhall, Nestrud & Julian, P.A.  
400 W. Capitol, Suite 2840  
Little Rock, AR 72201  
Phone: 501-372-5800  
Fax: 501-372-4941

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-----Original Message-----

**From:** Chuck Nestrud  
**Sent:** Friday, January 08, 2010 10:02 AM  
**To:** 'Nadia Hameed'  
**Subject:** RE: Albemarle-Notice of Enforcement Case No. 38347; Docket2009-1515-AIR-E

Thank you for your prompt response. The signed order and penalty is being over-nighted today. A copy is attached. Chuck



Charles R. Nestrud  
[cnestrud@cnjlaw.com](mailto:cnestrud@cnjlaw.com)  
Chisenhall, Nestrud & Julian, P.A.  
400 W. Capitol, Suite 2840  
Little Rock, AR 72201  
Phone: 501-372-5800  
Fax: 501-372-4941

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-----Original Message-----

From: Nadia Hameed [mailto:[NHameed@tceq.state.tx.us](mailto:NHameed@tceq.state.tx.us)]  
Sent: Thursday, January 07, 2010 8:07 AM  
To: Chuck Nestrud  
Subject: Re: Albemarle-Notice of Enforcement Case No. 38347; Docket2009-1515-AIR-E

This is correct, but my understanding is that you will also be keeping other records required by the rules to show compliance, thanks, Nadia Hameed  
713-767-3629

>>> Chuck Nestrud <[CNestrud@cnjlaw.com](mailto:CNestrud@cnjlaw.com)> 01/06/10 3:15 PM >>>

Thank you for discussing the proposed agreed order. As I read the order, in addition to paying the proposed penalty, Albemarle's only responsibility is to install a calorimeter on the flare that is capable of providing continuous readouts of the BTU/scfm values, and to certify the installation within 45 days of the effective date (estimated to be approximately 9-120 days from now). The order does not include any recordkeeping requirements or other compliance requirements. Could you please confirm that this is also your understanding of the requirements of the order? Thank you, Chuck Nestrud

Charles R. Nestrud  
[cnestrud@cnjlaw.com](mailto:cnestrud@cnjlaw.com)<<mailto:cnestrud@cnjlaw.com>>  
Chisenhall, Nestrud & Julian, P.A.  
400 W. Capitol, Suite 2840  
Little Rock, AR 72201  
Phone: 501-372-5800  
Fax: 501-372-4941

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**Chuck Nestrud**

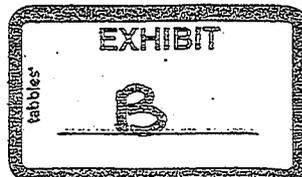
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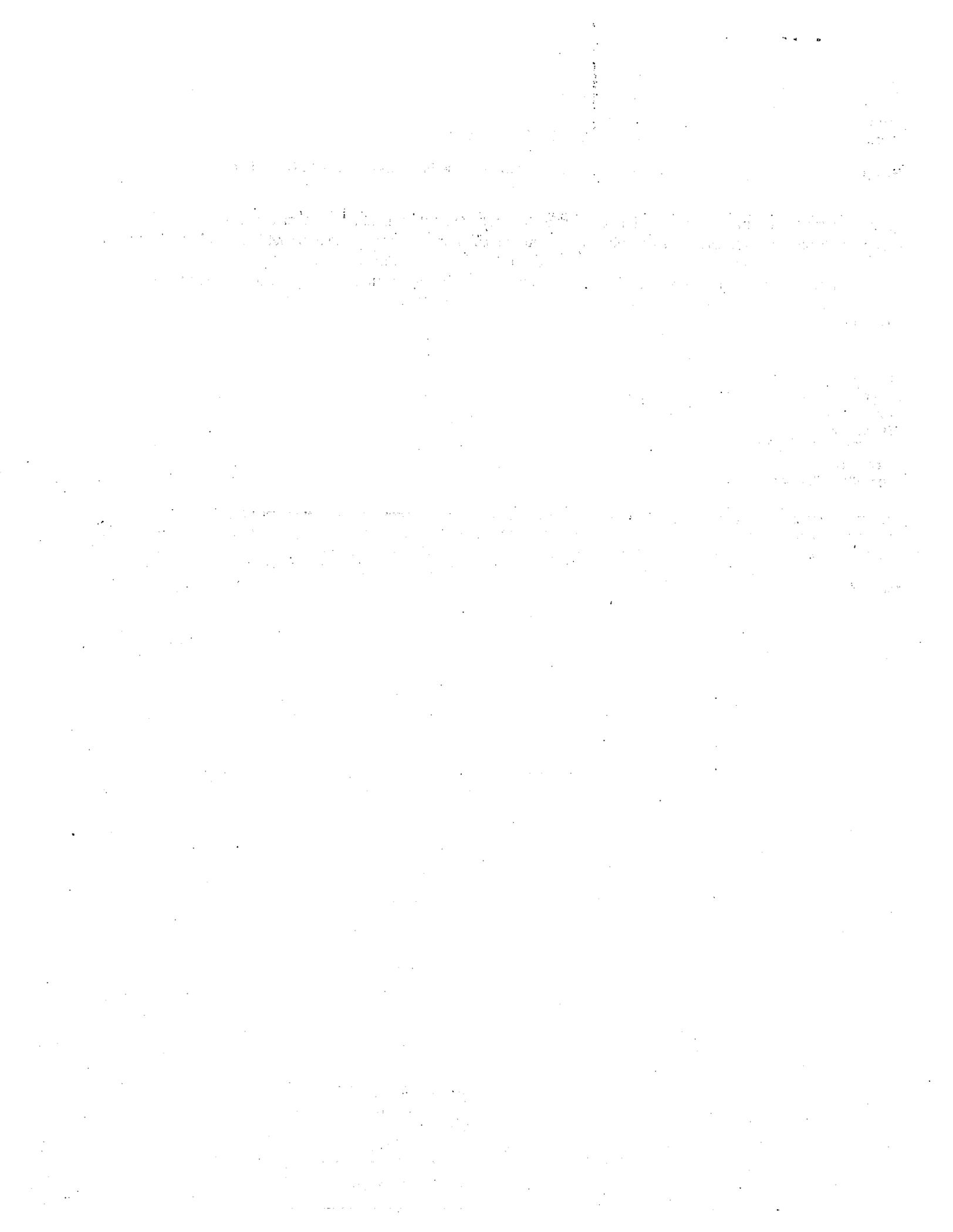
**From:** Chuck Nestrud  
**Sent:** Wednesday, January 06, 2010 3:16 PM  
**To:** 'nhameed@tceq.state.tx.us'  
**Subject:** Albemarle-Notice of Enforcement Case No. 38347; Docket 2009-1515-AIR-E

Thank you for discussing the proposed agreed order. As I read the order, in addition to paying the proposed penalty, Albemarle's only responsibility is to install a calorimeter on the flare that is capable of providing continuous readouts of the BTU/scfm values, and to certify the installation within 45 days of the effective date (estimated to be approximately 9—120 days from now). The order does not include any recordkeeping requirements or other compliance requirements. Could you please confirm that this is also your understanding of the requirements of the order? Thank you, Chuck Nestrud

Charles R. Nestrud  
[cnestrud@cnjlaw.com](mailto:cnestrud@cnjlaw.com)  
Chisenhall, Nestrud & Julian, P.A.  
400 W. Capitol, Suite 2840  
Little Rock, AR 72201  
Phone: 501-372-5800  
Fax: 501-372-4941

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**ED 5**



# Penalty Calculation Worksheet (PCW)

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

<b>TCEQ</b>	<b>DATES</b>	Assigned 8-Sep-2009	PCW 16-Oct-2009	Screening 10-Sep-2009	EPA Due
-------------	--------------	---------------------	-----------------	-----------------------	---------

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent: Albemarle Corporation	
Reg. Ent. Ref. No. RN100218247	
Facility/Site Region: 12-Houston	Major/Minor Source: Major

<b>CASE INFORMATION</b>	
Enf./Case ID No. 38347	No. of Violations 2
Docket No. 2009-1515-AIR-E	Order Type 1660
Media Program(s) Air	Government/Non-Profit No
Multi-Media	Enf. Coordinator Nadia Hameed
	EC's Team Enforcement Team 5
Admin. Penalty \$ Limit Minimum \$0	Maximum \$10,000

## Penalty Calculation Section

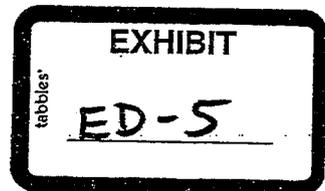
<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>		<b>Subtotal 1</b>	<b>\$1,100</b>
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
<b>Compliance History</b>	68.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$748</b>
Notes	Penalty enhancement due to one 1660 agreed order with denial of liability, one order without denial, one same or similar NOV, and ten non-similar NOVs. Penalty reduction for two Notices of Audit.		
<b>Culpability</b>	No 0.0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
Notes	The Respondent does not meet the culpability criteria.		
<b>Good Faith Effort to Comply Total Adjustments</b>		<b>Subtotal 5</b>	<b>\$25</b>
<b>Economic Benefit</b>	0.0% Enhancement	<b>Subtotal 6</b>	<b>\$0</b>
Total EB Amounts \$10,362	*Capped at the Total EB \$ Amount		
Approx. Cost of Compliance \$50,700			
<b>SUM OF SUBTOTALS 1-7</b>		<b>Final Subtotal</b>	<b>\$1,823</b>
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		0.0%	<b>Adjustment</b>
Reduces or enhances the Final Subtotal by the indicated percentage.			
Notes			
<b>Final Penalty Amount</b>			<b>\$1,823</b>
<b>STATUTORY LIMIT ADJUSTMENT</b>		<b>Final Assessed Penalty</b>	<b>\$1,823</b>
<b>DEFERRAL</b>		20.0% Reduction	<b>Adjustment</b>
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)			
Notes	Deferral offered for expedited settlement.		
<b>PAYABLE PENALTY</b>			<b>\$1,459</b>

STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify this is a true and correct copy of a Texas Commission on Environmental Quality (TCEQ) document, which is filed in the Records of the Commission Given under my hand and the seal of office.

*Rick Thomas* **FEB 23 2011**

Rick Thomas, Custodian of Records



Screening Date 10-Sep-2009

Docket No. 2009-1515-AIR-E

PCW

Respondent Albemarle Corporation

Policy Revision 2 (September 2002)

Case ID No. 38347

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100218247

Media [Statute] Air

Enf. Coordinator Nadia Hameed

**Compliance History Worksheet**

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	10	20%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	2	-2%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 68%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Penalty enhancement due to one 1660 agreed order with denial of liability, one order without denial, one same or similar NOV, and ten non-similar NOVs. Penalty reduction for two Notices of Audit.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 68%

<b>Screening Date</b> 10-Sep-2009	<b>Docket No.</b> 2009-1515-AIR-E	<b>PCW</b>			
<b>Respondent</b> Albemarle Corporation	<i>Policy Revision 2 (September 2002)</i>				
<b>Case ID No.</b> 38347	<i>PCW Revision October 30, 2008</i>				
<b>Reg. Ent. Reference No.</b> RN100218247					
<b>Media [Statute]</b> Air					
<b>Enf. Coordinator</b> Nadia Hameed					
<b>Violation Number</b> 1					
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), 40 Code of Federal Regulations § 60.18(c)(3)(ii), Air Permit No. 69A, Special Condition ("SC") No. 4A, Air Permit No. 3962, SC No. 3, Air Permit No. 18114, SC No. 2, Federal Operating Permit ("FOP") No. 02285, Special Terms and Conditions 1A and 8, and Tex. Health & Safety Code § 382.085(b)				
<b>Violation Description</b>	Failed to maintain the minimum net heating value of 300 British Thermal Units per standard cubic feet per minute ("BTU/scfm") on Flare G-D-1. Specifically, from February 1, 2006 through March 5, 2007, from March 7, 2007 through August 19, 2007, and on April 19, 2008, Flare G-D-1 was operated for a total period of 9,669 operating hours of which 2,244 hours (23 percent of the total operating time) were below the minimum net heating value. During this time period no unauthorized emissions from Flare G-D-1 were documented. The lowest recorded net heating value was 58.22 BTU/scfm on April 17, 2008.				
<b>Base Penalty</b>		\$10,000			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
OR	<b>Harm</b>			<b>Percent</b>	
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>		<b>Minor</b>
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="10%"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>&gt;&gt; Programmatic Matrix</b>					
Matrix Notes	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	<b>Percent</b>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="0%"/>
Human health or the environment had the potential to be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation. Based on RG-360/08, 2008 Emissions Inventory Guidelines, a 93% destruction efficiency is assumed for a flare operating below the minimum net heating value.					
<b>Adjustment</b>					\$9,000
					<b>\$1,000</b>
<b>Violation Events</b>					
<b>Number of Violation Events</b>		<input type="text" value="1"/>	<b>Number of violation days</b>		<input type="text" value="563"/>
mark only one with an x	daily	<input type="checkbox"/>			
	weekly	<input type="checkbox"/>			
	monthly	<input type="checkbox"/>			
	quarterly	<input type="checkbox"/>			
	semiannual	<input type="checkbox"/>			
	annual	<input type="checkbox"/>			
single event	<input checked="" type="checkbox"/>				
<b>Violation Base Penalty</b>					\$1,000
One single event is recommended for the one flare operated below the minimum net heating value.					
<b>Good Faith Efforts to Comply</b>			<b>0.0% Reduction</b>		<b>\$0</b>
			Before NOV      NOV to EDPRP/Settlement		
Extraordinary	<input type="checkbox"/>				
Ordinary	<input type="checkbox"/>				
N/A	<input checked="" type="checkbox"/>	(mark with x)			
Notes	The Respondent does not meet the good faith criteria for this violation.				
<b>Violation Subtotal</b>					\$1,000
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		<input type="text" value="\$10,361"/>	<b>Violation Final Penalty Total</b>		<input type="text" value="\$1,680"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b>					\$1,680

### Economic Benefit Worksheet

**Respondent:** Albemarle Corporation

**Case ID No:** 38347

**Reg. Ent. Reference No:** RN100218247

**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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$100	1-Feb-2006	18-Jun-2009	3.38	\$1	\$23	\$24
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	\$500	1-Feb-2006	16-Jun-2009	3.37	\$84	n/a	\$84
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$50,000	1-Feb-2006	9-Mar-2010	4.10	\$10,253	n/a	\$10,253

**Notes for DELAYED costs**

Estimated cost for revising procedures and alarm systems (completed June 16 and 18, 2009) and installing a calorimeter to provide continuous readings of the BTU values. The date required is based on the initial date of non-compliance. The final date is the date the corrective actions were completed or are expected to be completed.

**Avoided Costs**

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

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

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

**\$50,600**

**TOTAL**

**\$10,361**

**Screening Date:** 10-Sep-2009      **Docket No.:** 2009-1515-AIR-E      **PCW:**  
**Respondent:** Albemarle Corporation      *Policy Revision 2 (September 2002)*  
**Case ID No.:** 38347      *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.:** RN100218247  
**Media [Statute]:** Air  
**Enf. Coordinator:** Nadia Hameed  
**Violation Number:** 2  
**Rule Cite(s):** 30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), Air Permit No. 18114, SC No. 40A, FOP No. 02285, Special Terms and Conditions 8, and Tex. Health & Safety Code § 382.085(b)  
**Violation Description:** Failed to maintain records. Specifically, the Respondent failed to provide and maintain the correct list of equipment components that were excluded from the Leak Detection and Repair monitoring program.  
**Base Penalty:** \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
			X	1%

Matrix Notes: Less than 30 percent of the rule requirement was not met.

Adjustment: \$9,900

\$100

Violation Events

Number of Violation Events: 1      Number of violation days: 14

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

Violation Base Penalty: \$100

One single event is recommended based on the incomplete records.

Good Faith Efforts to Comply: 25.0% Reduction      \$25

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

Notes: The Respondent completed the corrective actions on August 13, 2009, prior to the August 31, 2009, NOE date.

Violation Subtotal: \$75

Economic Benefit (EB) for this violation      Statutory Limit Test

Estimated EB Amount: \$0      Violation Final Penalty Total: \$143

This violation Final Assessed Penalty (adjusted for limits): \$143

## Economic Benefit Worksheet

**Respondent:** Albemarle Corporation

**Case ID No.:** 38347

**Reg. Ent. Reference No.:** RN100218247

**Media:** Air

**Violation No.:** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>(No commas or \$)</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	---	---------------	------------	-----	----------------	---------------	-----------

**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)	\$100	30-Jul-2009	13-Aug-2009	0.04	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for correcting the list of excluded components. The date required is based on the date of the investigation. The final date is the date the corrective actions were completed.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$0



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	8-Sep-2009	Screening	10-Sep-2009	EPA Due	
	PCW	9-Dec-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Albemarle Corporation
Reg. Ent. Ref. No.	RN100218247
Facility/Site Region	12-Houston
Major/Minor Source	Major

<b>CASE INFORMATION</b>			
Enf./Case ID No.	38347	No. of Violations	2
Docket No.	2009-1515-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Nadia Hameed
		EC's Team	Enforcement Team:5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$17,600</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	68.0% Enhancement	<b>Subtotals 2, 3 &amp; 7</b>	<b>\$11,968</b>
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Notes: Penalty enhancement due to one 1660 agreed order with denial of liability, one order without denial, one same or similar NOV, and ten non-similar NOVs. Penalty reduction for two Notices of Audit.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
--	-------------------	------------

<b>Economic Benefit</b>	0.0% Enhancement	<b>Subtotal 6</b>	<b>\$0</b>
-------------------------	------------------	-------------------	------------

Total EB Amounts \$10,362  
 Approx. Cost of Compliance \$50,700  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$29,568</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** **\$29,568**

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$29,568</b>
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

<b>PAYABLE PENALTY</b>	<b>\$29,568</b>
------------------------	-----------------

**Screening Date** 10-Sep-2009  
**Respondent** Albemarle Corporation  
**Case ID No.** 38347  
**Reg. Ent. Reference No.** RN100218247  
**Media [Statute]** Air  
**Enf. Coordinator** Nadia Hameed

**Docket No.** 2009-1515-AIR-E

**PCW**

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

**Compliance History Worksheet**

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	10	20%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	2	-2%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	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)** 68%

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

No

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

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

Average Performer

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

>> **Compliance History Summary**

**Compliance History Notes**

Penalty enhancement due to one 1660 agreed order with denial of liability, one order without denial, one same or similar NOV, and ten non-similar NOVs. Penalty reduction for two Notices of Audit.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 68%

<b>Screening Date</b> 10-Sep-2009	<b>Docket No.</b> 2009-1515-AIR-E	<b>PCW</b>														
<b>Respondent</b> Albemarle Corporation	<small>Policy Revision 2 (September 2002) PCW Revision October 30, 2008</small>															
<b>Case ID No.</b> 38347																
<b>Reg. Ent. Reference No.:</b> RN100218247																
<b>Media [Statute]</b> Air																
<b>Enf. Coordinator</b> Nadia Hameed																
<b>Violation Number</b> 1																
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), 40 Code of Federal Regulations § 60.18(c)(3)(ii), Air Permit No. 69A, Special Condition ("SC") No. 4A, Air Permit No. 3962, SC No. 3, Air Permit No. 18114, SC No. 2, Federal Operating Permit ("FOP") No. 02285, Special Terms and Conditions 1A and 8, and Tex. Health & Safety Code § 382.085(b)															
<b>Violation Description</b>	Failed to maintain the minimum net heating value of 300 British Thermal Units per standard cubic feet per minute ("BTU/scfm") on Flare G-D-1. Specifically, from February 1, 2006 through March 5, 2007, from March 7, 2007 through August 19, 2007 and on April 19, 2008, Flare G-D-1 was operated for a total period of 9,669 operating hours of which 2,244 hours (23 percent of the total operating time) were below the minimum net heating value. During this time period no unauthorized emissions from Flare G-D-1 were documented. The lowest recorded net heating value was 58.22 BTU/scfm on April 17, 2006.															
<b>Base Penalty</b>	\$10,000															
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																
<b>OR</b>	<b>Harm</b>															
	Release    Major    Moderate    Minor															
	Actual															
	Potential	X														
		<b>Percent</b> 25%														
<b>&gt;&gt; Programmatic Matrix</b>																
	Falsification    Major    Moderate    Minor															
	Actual															
	Potential															
		<b>Percent</b> 0%														
<b>Matrix Notes</b>	Human health or the environment had the potential to be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation. Based on RG-360/08, 2008 Emissions Inventory Guidelines, a 93% destruction efficiency is assumed for a flare operating below the minimum net heating value.															
<b>Adjustment</b>	\$7,500															
<b>\$2,500</b>																
<b>Violation Events</b>																
	<b>Number of Violation Events</b> 7	<b>Number of violation days</b> 563														
<small>mark only one with an x</small>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>daily</td><td></td></tr> <tr><td>weekly</td><td></td></tr> <tr><td>monthly</td><td></td></tr> <tr><td>quarterly</td><td style="text-align: center;">X</td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single event</td><td></td></tr> </table>	daily		weekly		monthly		quarterly	X	semiannual		annual		single event		<b>Violation Base Penalty</b> \$17,500
daily																
weekly																
monthly																
quarterly	X															
semiannual																
annual																
single event																
Seven quarterly events are recommended for the one flare operated below the minimum net heating value.																
<b>Good Faith Efforts to Comply</b>																
	0.0% Reduction	\$0														
	Before NOV    NOV to EDRP/Settlement															
Extraordinary																
Ordinary																
N/A	X (mark with x)															
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.															
<b>Violation Subtotal</b>	\$17,500															
<b>Economic Benefit (EB) for this violation</b>																
<b>Estimated EB Amount</b>	\$10,361	<b>Violation Final Penalty Total</b> \$29,400														
<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$29,400																

### Economic Benefit Worksheet

**Respondent:** Albemarle Corporation

**Case ID No.:** 38347

**Reg. Ent. Reference No.:** RN100218247

**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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$100	1-Feb-2006	18-Jun-2009	3.38	\$1	\$23	\$24
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	\$500	1-Feb-2006	16-Jun-2009	3.37	\$84	n/a	\$84
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$50,000	1-Feb-2006	9-Mar-2010	4.10	\$10,253	n/a	\$10,253

**Notes for DELAYED costs**

Estimated cost for revising procedures and alarm systems (completed June 16 and 18, 2009) and installing a calorimeter to provide continuous readings of the BTU values. The date required is based on the initial date of non-compliance. The final date is the date the corrective actions were completed or are expected to be completed.

**Avoided Costs**

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

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

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$50,600

**TOTAL**

\$10,361

<b>Screening Date</b> 10-Sep-2009	<b>Docket No.</b> 2009-1515-AIR-E	<b>PCW</b>	
<b>Respondent</b> Albemarle Corporation		<small>Policy Revision 2 (September 2002)</small>	
<b>Case ID No.</b> 38347		<small>PCW Revision October 30, 2008</small>	
<b>Reg. Ent. Reference No.</b> RN100218247			
<b>Media [Statute]</b> Air			
<b>Enf. Coordinator</b> Nadia Hameed			
<b>Violation Number</b> 2			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), Air Permit No. 18114, SC No. 10A, FOP No. 02285, Special Terms and Conditions 8, and Tex. Health & Safety Code § 382.085(b)		
<b>Violation Description</b>	Failed to maintain records. Specifically, the Respondent failed to provide and maintain the correct list of equipment components that were excluded from the Leak Detection and Repair monitoring program.		
	<b>Base Penalty</b>	\$10,000	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
OR	<b>Harm</b>		
	Major	Moderate	Minor
<b>Actual</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Potential</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<b>Percent</b>		0%
<b>&gt;&gt; Programmatic Matrix</b>			
	Major	Moderate	Minor
<b>Falsification</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<b>Percent</b>		1%
<b>Matrix Notes</b>	Less than 30 percent of the rule requirement was not met.		
	<b>Adjustment</b>	\$9,900	
		<b>Subtotal</b>	\$100
<b>Violation Events</b>			
<b>Number of Violation Events</b>	1	<b>Number of violation days</b>	14
mark only one with an x	daily	<input type="checkbox"/>	<b>Violation Base Penalty</b>
	weekly	<input type="checkbox"/>	
	monthly	<input type="checkbox"/>	
	quarterly	<input type="checkbox"/>	
	semiannual	<input type="checkbox"/>	
	annual	<input type="checkbox"/>	
	single event	<input checked="" type="checkbox"/>	
	<b>Violation Base Penalty</b>		\$100
	One single event is recommended based on the incomplete records.		
<b>Good Faith Efforts to Comply</b>			
	0.0% Reduction	<b>Subtotal</b>	
	Before NOV	NOV to EDRP/Settlement Offer	\$0
<b>Extraordinary</b>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Ordinary</b>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>N/A</b>	<input checked="" type="checkbox"/>	(mark with x)	
<b>Notes</b>	The Respondent does not meet the good faith criteria.		
	<b>Violation Subtotal</b>	\$100	
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b>	\$0	<b>Violation Final Penalty Total</b>	\$168
<b>This violation Final Assessed Penalty (adjusted for limits)</b>			\$168

### Economic Benefit Worksheet

Respondent: Albemarle Corporation

Case ID No. 38347

Reg. Ent. Reference No. RN100218247

Media: Air

Violation No. 2

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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**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)	\$100	30-Jul-2009	13-Aug-2009	0.04	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for correcting the list of excluded components. The date required is based on the date of the investigation. The final date is the date the corrective actions were completed.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$0

**ED 6**



# Penalty Calculation Worksheet (PCW)

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

<b>TCEQ</b> DATES	Assigned	8-Sep-2009			
	PCW	9-Dec-2010	Screening	10-Sep-2009	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Albemarle Corporation
Reg. Ent. Ref. No.	RN100218247
Facility/Site Region	12-Houston
Major/Minor Source	Major

<b>CASE INFORMATION</b>	
Enf./Case ID No.	38347
Docket No.	2009-1515-AIR-E
Media Program(s)	Air
Multi-Media	
No. of Violations	2
Order Type	1660
Government/Non-Profit	No
Enf. Coordinator	Nadia Hameed
EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0
Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<i>Subtotal 1</i>	\$17,600
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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	68.0% Enhancement	<i>Subtotals 2, 3, &amp; 7</i>	\$11,968
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Notes: Penalty enhancement due to one 1660 agreed order with denial of liability, one order without denial, one same or similar NOV, and ten non-similar NOVs. Penalty reduction for two Notices of Audit.

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

Good Faith Effort to Comply Total Adjustments	<i>Subtotal 5</i>	\$0
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Economic Benefit	0.0% Enhancement	<i>Subtotal 6</i>	\$0
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Total EB Amounts \$10,362  
 Approx. Cost of Compliance \$50,700  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<i>Final Subtotal</i>	\$29,568
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

	<i>Final Penalty Amount</i>	\$29,568
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<i>Final Assessed Penalty</i>	\$29,568
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DEFERRAL	20.0%	Reduction	<i>Adjustment</i>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

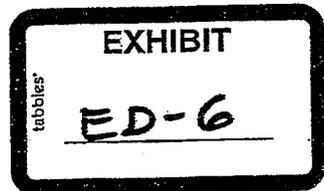
<b>PAYABLE PENALTY</b>	\$29,568
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STATE OF TEXAS  
 COUNTY OF TRAVIS

I hereby certify this is a true and correct copy of a Texas Commission on Environmental Quality (TCEQ) document, which is filed in the Records of the Commission Given under my hand and the seal of office.

*Rick Thomas*  
 Rick Thomas, Custodian of Records  
 Texas Commission on Environmental Quality

FEB 23 2011



Screening Date 10-Sep-2009

Docket No. 2009-1515-AIR-E

PCW

Respondent Albemarle Corporation

Policy Revision 2 (September 2002)

Case ID No. 38347

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100218247

Media [Statute] Air

Enf. Coordinator Nadia Hameed

### Compliance History Worksheet

>> Compliance History Site/Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	10	20%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	2	-2%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 68%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Penalty enhancement due to one 1660 agreed order with denial of liability, one order without denial, one same or similar NOV, and ten non-similar NOVs. Penalty reduction for two Notices of Audit.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 68%

<b>Screening Date</b> 10-Sep-2009	<b>Docket No.</b> 2009-1515-AIR-E	<b>PCW</b>
<b>Respondent</b> Albemarle Corporation		<small>Policy Revision 2 (September 2002)</small>
<b>Case ID No.</b> 38347		<small>PCW Revision October 30, 2008</small>
<b>Reg. Ent. Reference No.</b> RN100218247		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> Nadia Hameed		
<b>Violation Number</b> 1		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), 40 Code of Federal Regulations § 60.18(c)(3)(ii), Air Permit No. 69A, Special Condition ("SC") No. 4A, Air Permit No. 3952, SC No. 3, Air Permit No. 18114, SC No. 2, Federal Operating Permit ("FOP") No. 02285, Special Terms and Conditions 1A and 8, and Tex. Health & Safety Code § 382.085(b)	
<b>Violation Description</b>	Failed to maintain the minimum net heating value of 300 British Thermal Units per standard cubic feet per minute ("BTU/scfm") on Flare G-D-1. Specifically, from February 1, 2006 through March 5, 2007, from March 7, 2007 through August 19, 2007 and on April 19, 2008, Flare G-D-1 was operated for a total period of 9,669 operating hours of which 2,244 hours (23 percent of the total operating time) were below the minimum net heating value. During this time period no unauthorized emissions from Flare G-D-1 were documented. The lowest recorded net heating value was 58.22 BTU/scfm on April 17, 2006.	
	<b>Base Penalty</b>	\$10,000
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>		
OR	<b>Harm</b>	
	Release      Major      Moderate      Minor	
	Actual	
	Potential	x
		<b>Percent</b> 25%
<b>&gt;&gt; Programmatic Matrix</b>		
	Falsification      Major      Moderate      Minor	
		<b>Percent</b> 0%
<b>Matrix Notes</b>	Human health or the environment had the potential to be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation. Based on RG-360/08, 2008 Emissions Inventory Guidelines, a 93% destruction efficiency is assumed for a flare operating below the minimum net heating value.	
	<b>Adjustment</b>	\$7,500
		<b>\$2,500</b>
<b>Violation Events</b>		
	<b>Number of Violation Events</b> 7	<b>Number of violation days</b> 563
<small>mark only one with an x</small>	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	
		<b>Violation Base Penalty</b> \$17,500
	Seven quarterly events are recommended for the one flare operated below the minimum net heating value.	
<b>Good Faith Efforts to Comply</b>		
	0.0% Reduction	\$0
	Before NOV      NOV to EDPRP/Settlement	
Extraordinary		
Ordinary		
N/A	x	(mark with x)
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.	
	<b>Violation Subtotal</b>	\$17,500
<b>Economic Benefit (EB) for this violation</b>		
	<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>	\$10,361	<b>Violation Final Penalty Total</b> \$29,400
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$29,400

### Economic Benefit Worksheet

**Respondent:** Albemarle Corporation  
**Case ID No.:** 38347  
**Reg. Ent. Reference No.:** RN100218247  
**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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**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$100	1-Feb-2006	18-Jun-2009	3.38	\$1	\$23	\$24
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	\$500	1-Feb-2006	16-Jun-2009	3.87	\$84	n/a	\$84
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$50,000	1-Feb-2006	9-Mar-2010	4.10	\$10,253	n/a	\$10,253

**Notes for DELAYED costs**

Estimated cost for revising procedures and alarm systems (completed June 16 and 18, 2009) and installing a calorimeter to provide continuous readings of the BTU values. The date required is based on the initial date of non-compliance. The final date is the date the corrective actions were completed or are expected to be completed.

**Avoided Costs**

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

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

**Notes for AVOIDED costs**

Approx. Cost of Compliance

\$50,600

**TOTAL**

\$10,361

<b>Screening Date</b> 10-Sep-2009		<b>Docket No.</b> 2009-1515-AIR-E		<b>PCW</b>
<b>Respondent</b> Albemarle Corporation		<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 38347		<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN100218247				
<b>Media [Statute]</b> Air				
<b>Enf. Coordinator</b> Nadia Hameed				
<b>Violation Number</b> 2				
<b>Rule Cite(s)</b> 30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), Air Permit No. 18114, SC No. 10A, FOP No. 02285, Special Terms and Conditions 8, and Tex. Health & Safety Code § 382.085(b)				
<b>Violation Description</b> Failed to maintain records. Specifically, the Respondent failed to provide and maintain the correct list of equipment components that were excluded from the Leak Detection and Repair monitoring program.				
<b>Base Penalty</b>				\$10,000
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			<b>Percent</b>
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	
	<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>&gt;&gt; Programmatic Matrix</b>				
<b>Falsification</b>		<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
<input type="text"/>		<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
<b>Matrix Notes</b>		Less than 30 percent of the rule requirement was not met.		
<b>Adjustment</b>				\$9,900
				\$100
<b>Violation Events</b>				
<b>Number of Violation Events</b>		<input type="text"/>	<b>Number of violation days</b>	
		<input type="text"/>	<b>Violation Base Penalty</b>	
<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	<input checked="" type="checkbox"/>	
One single event is recommended based on the incomplete records.				
<b>Good Faith Efforts to Comply</b>		0.0%	<b>Reduction</b>	
		<input type="text"/>	<input type="text"/>	
		<input type="text"/>	<input type="text"/>	
		<input type="text"/>	<input type="text"/>	
		<input checked="" type="checkbox"/>	<input type="text"/>	
		<input type="text"/>	<input type="text"/>	
<b>Notes</b>		The Respondent does not meet the good faith criteria.		
<b>Violation Subtotal</b>				\$100
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		<input type="text"/>	<b>Violation Final Penalty Total</b>	
		\$0	<input type="text"/>	
				\$168
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				\$168

## Economic Benefit Worksheet

**Respondent:** Albemarle Corporation

**Case ID No.:** 38347

**Reg. Ent. Reference No.:** RN100218247

**Media:** Air

**Violation No.:** 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 commissions							

### 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)	\$100	30-Jul-2009	13-Aug-2009	10.04	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost for correcting the list of excluded components. The date required is based on the date of the investigation. The final date is the date the corrective actions were completed.

### Avoided Costs

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

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

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$100

**TOTAL**

\$0

**ED 7**



Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 21, 2010

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, Texas 78711-3087

Re: **Executive Director's Preliminary Report and Petition  
Albemarle Corporation; RN100218247  
TCEQ Docket No. 2009-1515-AIR-E**

Dear Ms. Castañuela:

Enclosed for filing is the original "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Albemarle Corporation (the "EDPRP").

Enclosed please also find one copy of the EDPRP, and one copy of the letter to the Respondent. Please file stamp these documents and return them to Laurencia N. Fasoyiro, Attorney, Litigation Division, MC R-12. If you have any questions or comments, please call me at (713) 422-8914.

Sincerely,

A handwritten signature in black ink, appearing to read "Laurencia N. Fasoyiro".

Laurencia N. Fasoyiro, Staff Attorney  
Office of Legal Services, Litigation Division

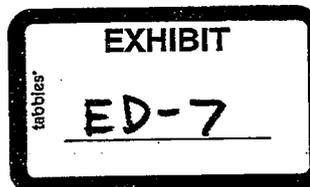
Enclosures

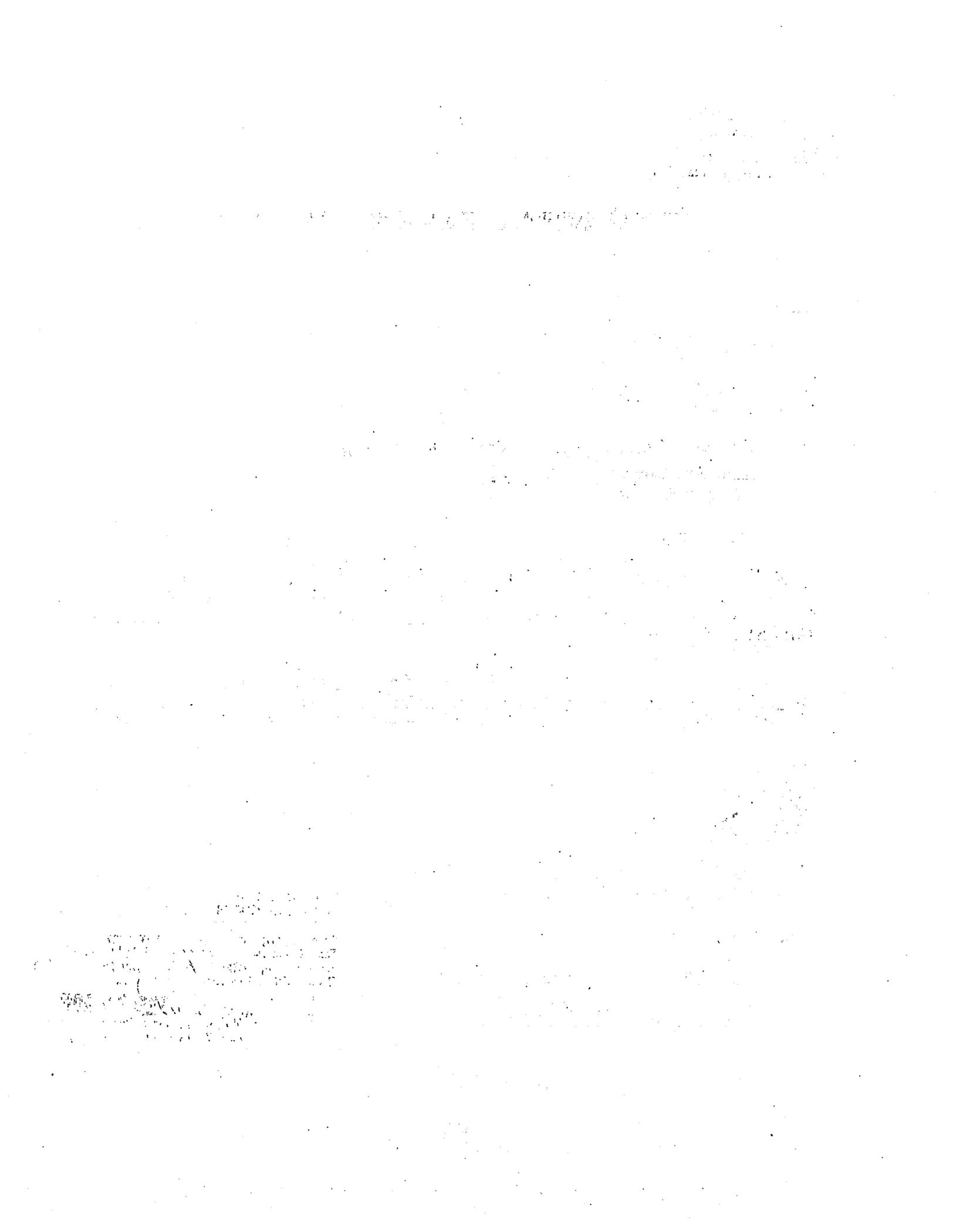
cc: Ms. Nadia Hameed, Enforcement Division  
Mr. Jason Harris, Air Section Manager  
Mr. Blas Coy, Public Interest Counsel

STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify this is a true and correct copy of a Texas Commission on Environmental Quality (TCEQ) document, which is filed in the Records of the Commission Given under my hand and the seal of office.

A handwritten signature in black ink, appearing to read "Rick Thomas".  
**FEB 23 2011**  
Rick Thomas, Custodian of Records  
Texas Commission on Environmental Quality





Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 21, 2010

Via Certified Mail, Return Receipt Requested, Article Number 70091680000223235699  
Via First Class Mail, Postage Pre-Paid

CT CORPORATION SYSTEM, Registered Agent  
350 N. St. Paul Street  
Suite 2900  
Dallas, TX 75201-4234

Re: Albemarle Corporation; RN100218247  
TCEQ Docket No. 2009-1515-AIR-E

Dear Registered Agent:

Please find enclosed a copy of the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Albemarle Corporation (the "EDPRP").

The Commission may issue a default order against Albemarle Corporation unless, within 20 days after you receive this letter, an answer requesting a hearing in this matter is filed. If a default order is entered, you will be required to pay the assessed penalty and complete the corrective action set forth in the order. **YOUR FAILURE TO ACCEPT OR PICK UP CERTIFIED MAIL WILL NOT RELIEVE YOU OF YOUR RESPONSIBILITY IN THIS MATTER.** For further information concerning these enforcement procedures, you may contact the Commission's Office of the Public Interest Counsel at (512) 239-6363.

To file an answer requesting a hearing, you should send original correspondence referencing the docket number above to:

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, Texas 78711-3087

and:

Registered Agent  
June 21, 2010  
Page 2

Laurencia N. Fasoyiro, Staff Attorney  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 175  
Austin, Texas 78711-3087

The Office of the Chief Clerk also accepts documents via e-Filing. To e-file a document with the Chief Clerk, go to <http://www10.tceq.state.tx.us/epic/efilings> and follow the on-screen instructions. The documents must be in either Microsoft Word or Adobe Acrobat (pdf), and all submittals will be date and time stamped upon receipt. Documents are due by close of business (usually 5:00 pm CST) on the deadline date.

Please contact me at (713) 422-8914 if you have any questions or would like to schedule a meeting to discuss settlement. We look forward to cooperatively resolving this matter with you.

Sincerely,



Laurencia N. Fasoyiro, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Enclosure

cc: Mr. Charles R. Nestrud, Chisenhall, Nestrud & Julian, P.A., Attorneys at Law  
Regions Center, 400 West Capitol, Suite 2840, Little Rock, Arkansas 72201, Via  
Certified Mail, Article No. 7009 1680 0002 2323 5705  
Office of the Chief Clerk, MC 105

TCEQ DOCKET NO. 2009-1515-AIR-E

IN THE MATTER OF	§	BEFORE THE
AN ENFORCEMENT ACTION	§	
AGAINST ALBEMARLE	§	TEXAS COMMISSION ON
CORPORATION;	§	
RN100218247	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S PRELIMINARY REPORT AND PETITION  
RECOMMENDING THAT  
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
ENTER AN ENFORCEMENT ORDER ASSESSING AN ADMINISTRATIVE PENALTY  
AGAINST AND REQUIRING CERTAIN ACTIONS OF ALBEMARLE CORPORATION

INTRODUCTION

1. The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), by and through a representative of the Litigation Division, hereby issues this Preliminary Report and Petition pursuant to TEX. WATER CODE § 7.054 and chs. 7, TEX. HEALTH & SAFETY CODE ch. 382 and 30 TEX. ADMIN. CODE chs. 70, 116 and 122. Discovery related to this matter is intended to be conducted under Level 3 pursuant to TEX. R. CIV. P. 190.
2. Albemarle Corporation ("Respondent") is subject to the enforcement authority of the Commission pursuant to TEX. WATER CODE § 7.002 because the violations alleged herein are within the Commission's general jurisdiction, pursuant to TEX. WATER CODE § 5.013 as they involve violations of the state's air quality program.
3. The Executive Director has come to the conclusion that Respondent violated 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), 40 CFR § 60.18(c)(3)(ii), Air Permit No. 69A, Special Condition ("SC") No. 4A, Air Permit No. 3962, SC No. 3, Air Permit No. 18114, SC Nos. 2 and 10A, Federal Operating Permit ("FOP") No. 02285, Special Terms and Conditions ("STC") Nos. 1A and 8, and TEX. HEALTH & SAFETY CODE § 382.085(b). The Executive Director recommends that the Commission enter an order assessing an administrative penalty against Respondent in the amount of twenty-nine thousand five hundred forty three dollars (\$29,543.00). Further, the Executive Director recommends that the Commission order Respondent to undertake such actions as are necessary to bring its operations into compliance with the Texas Water Code, the Texas Health and Safety Code and TCEQ rules.
4. EFFECTIVE SEPTEMBER 1, 2006, THE TCEQ DOES NOT ISSUE, AMEND, OR RENEW PERMITS, REGISTRATIONS, CERTIFICATIONS, OR LICENSES TO AN ENTITY OR PERSON IF ANY DELINQUENT PENALTIES OR DELINQUENT FEES ARE ASSOCIATED WITH THAT ENTITY'S/PERSON'S

**9-DIGIT TCEQ CUSTOMER NUMBER (CN), REGARDLESS OF MEDIA AND/OR FACILITY LOCATION.**

**FACTS SUPPORTING VIOLATIONS**

5. Respondent owns and operates a chemical manufacturing plant located at 2500 North South Street, Pasadena, Harris County, Texas (the "Plant"). The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
6. During an investigation conducted on July 30, 2009 through August 7, 2009, a TCEQ Houston Regional Office investigator documented that Respondent violated the following requirements:
  - a. 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), 40 CFR § 60.18(c)(3)(ii), Air Permit No. 69A, SC No. 4A, Air Permit No. 3962, SC No. 3, Air Permit No. 18114, SC No. 2, FOP No. 02285, STC Nos. 1A and 8, and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain the minimum net heating value of 300 British Thermal Units per standard cubic feet per minute ("BTU/scfm") on Flare G-D-1. Specifically, from February 1, 2006 through March 5, 2007, from March 7, 2007 through August 19, 2007 and on April 19, 2008, Flare G-D-1 was operated for a total period of 9,669 operating hours of which 2,244 hours (23 percent of the total operating time) were below the minimum net heating value. During this time period no unauthorized emissions from Flare G-D-1 were documented. The lowest recorded net heating value was 58.22 BTU/scfm on April 17, 2006; and
  - b. 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), Air Permit No. 18114, SC No. 10A, FOP No. 02285, STC No. 8, and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain records. Specifically, the Respondent failed to provide and maintain the correct list of equipment components that were excluded from the Leak Detection and Repair monitoring program.
7. Respondent received notice of the violations on or about September 5, 2009.

**IMPOSITION OF PENALTY**

8. Based on the facts supporting the violations, the Executive Director recommends that an administrative penalty be imposed pursuant to TEX. WATER CODE § 7.051. The Commission has the authority to assess an administrative penalty of up to \$10,000 for each day of each violation under TEX. WATER CODE § 7.052.

AMOUNT OF PENALTY

9. In determining the amount of the penalty, the Commission is required by TEX. WATER CODE § 7.053 to consider:
  - a. The nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment of existing water rights or the hazard or potential hazard created to the health or safety of the public;
  - b. The impact of the violation on:
    - i. air quality in the region;
    - ii. a receiving stream or underground water reservoir;
    - iii. instream uses, water quality, aquatic and wildlife habitat, or beneficial freshwater inflows to bays and estuaries; or
    - iv. affected persons;
  - c. With respect to the alleged violator:
    - i. the history and extent of previous violations;
    - ii. the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
    - iii. the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;
    - iv. economic benefit gained through the violation; and
    - v. the amount necessary to deter future violations; and
  - d. Any other matters that justice may require.
10. Based on the facts supporting the violations, and having considered the above-described factors, the Executive Director recommends that Respondent be required to pay an administrative penalty in the amount of twenty-nine thousand five hundred forty three dollars (\$29,543.00).
11. The penalty calculation worksheet ("PCW") for the recommended administrative penalty is attached hereto and incorporated herein by reference ("Attachment A"). The PCW sets forth each alleged violation and the statutory factors the Executive Director considered in determining the recommended administrative penalty.
12. The Executive Director followed an established Penalty Policy approved by the Commission in calculating the penalty in this enforcement action. See Texas Commission on Environmental Quality Penalty Policy (September 1, 2002).

CORRECTIVE ACTION ORDERING PROVISIONS

13. Pursuant to TEX. WATER CODE § 7.073, if a person violates any statute or rule within the Commission's jurisdiction, the Commission may order the person to take corrective action.
14. The Executive Director recommends that Respondent be required to implement the following corrective measures:
- a. Within 30 days after the effective date of the Commission Order, Respondent shall install a calorimeter on the flare to provide continuous readouts of the BTU/scfm values being sent to the Flare G-D-1;
  - b. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and /or other records, to demonstrate compliance with Ordering Provision No. 14.a. 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

**RESPONDENT'S RIGHTS AND RESPONSIBILITIES**

15. According to TEX. WATER CODE § 7.056 and the TCEQ's procedural rules, Respondent has a right to a hearing on the occurrence of the violations, the amount of the proposed penalty, or both. To preserve this right to a hearing, within 20 days after the day Respondent receives this Preliminary Report and Petition, Respondent must submit a written response to the Executive Director in accordance with TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105(a).

PRAYER

16. ACCORDINGLY, the Executive Director respectfully requests that the Commission enter an order, pursuant to TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382, assessing a penalty and granting other relief as requested above, together with any other relief the Commission finds appropriate.

Respectfully submitted,

Texas Commission on Environmental  
Quality

Mark R. Vickery, P.G.  
Executive Director

Stephanie Bergeron Perdue, Deputy Director  
Office of Legal Services

Kathleen C. Decker, Division Director  
Litigation Division



by \_\_\_\_\_  
Laurencia N. Fasoyiro  
State Bar of Texas No. 24012885  
Litigation Division, MC R-12  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486  
(713) 422-8914  
(713) 422-8910 (FAX)

CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> day of June, 2010, the original of the foregoing "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Albemarle Corporation" ("EDPRP") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing EDPRP was mailed via Certified Mail, Return Receipt Requested Article No. 7009 1680 0002 2323 5699, and via First Class Mail, postage prepaid, to:

C T CORPORATION SYSTEM, Registered Agent  
350 N. St. Paul Street  
Suite 2900  
Dallas, TX 75201-4234

I further certify that on this day a true and correct copy of the foregoing EDPRP was mailed via Certified Mail, Return Receipt Requested Article No. 7009 1680 0002 2323 5705, and via First Class Mail, postage prepaid, to:

Mr. Charles R. Nestrud  
Chisenhall, Nestrud & Julian, P.A.  
Attorneys at Law  
Regions Center  
400 West Capitol, Suite 2840  
Little Rock, Arkansas 72201

I further certify that on this day a true and correct copy of the foregoing EDPRP was electronically delivered to the Office of the Public Interest Counsel, Texas Commission on Environmental Quality, Austin, Texas.



---

Laurencia N. Fasoyiro, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

THE HISTORY OF THE

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**Attachment A**  
**Penalty Calculation Worksheet**

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

<b>TCEQ</b>	
<b>DATES</b>	Assigned 8-Sep-2009
PCW	16-Oct-2009 Screening 10-Sep-2009 EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Albemarle Corporation
Reg. Ent. Ref. No.	RN100218247
Facility/Site Region	12-Houston
Major/Minor Source	Major

<b>CASE INFORMATION</b>			
Enf./Case ID No.	38347	No. of Violations	2
Docket No.	2009-1515-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Nadia Hameed
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 5
Maximum	\$10,000		

**Penalty Calculation Section**

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<i>Subtotal 1</i>	\$17,600
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**ADJUSTMENTS (% TO SUBTOTAL 1)**

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

<b>Compliance History</b>	68.0% Enhancement	<i>Subtotals 2, 3, &amp; 7</i>	\$11,968
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Notes: Penalty enhancement due to one 1660 agreed order with denial of liability, one order without denial, one same or similar NOV, and ten non similar NOVs. Penalty reduction for two Notices of Audit.

<b>Culpability</b>	No	10.0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<i>Subtotal 5</i>	\$25
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<b>Economic Benefit</b>	0.0% Enhancement	<i>Subtotal 6</i>	\$0
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Total EB Amounts \$10,362  
 Approx. Cost of Compliance \$50,700  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<i>Final Subtotal</i>	\$29,543
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

*Final Penalty Amount* \$29,543

<b>STATUTORY LIMIT ADJUSTMENT</b>	<i>Final Assessed Penalty</i>	\$29,543
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<b>DEFERRAL</b>	Reduction	<i>Adjustment</i>	
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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 as the case is being referred to Litigation.

<b>PAYABLE PENALTY</b>	\$29,543
------------------------	----------

**Screening Date:** 10-Sep-2009  
**Respondent:** Albemarle Corporation  
**Case ID No.:** 38347  
**Reg. Ent. Reference No.:** RN100218247  
**Media (Statute):** Air  
**Ent. Coordinator:** Nadia Hameed

**Docket No.:** 2009-1515-AJR-E

PCW

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

**Compliance History Worksheet**

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

Component: Number of... Enter Number Here Adjust.

NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	10	20%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	2	-2%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 68%

**Repeat Violator (Subtotal 3)**

No

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

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

Average Performer

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

**Compliance History Summary**

Compliance History Notes

Penalty enhancement due to one 1650 agreed order with denial of liability, one order without denial, one same or similar NOV, and ten non-similar NOVs. Penalty reduction for two Notices of Audit.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 68%

Screening Date 10-Sep-2009 Respondent Albemarle Corporation Case ID No: 38347 Reg. Ent. Reference No.: RN100218247 Media (Statute) Air Ent. Coordinator Nadia Hameed Violation Number <u>1</u>	Docket No. 2009-1515-AIR-E PCW Policy Revision 2 (September 2002) PCW Revision October 30, 2008									
Rule Cite(s) Violation Description	30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), 40 Code of Federal Regulations § 60.18(c)(3)(II), Air Permit No. 69A, Special Condition ("SC") No. 4A, Air Permit No. 3992, SC No. 3, Air Permit No. 18114, SC No. 2, Federal Operating Permit ("FOP") No. 02285, Special Terms and Conditions 1A and 8, and Tex. Health & Safety Code § 382.085(b)  Failed to maintain the minimum net heating value of 300 British Thermal Units per standard cubic feet per minute ("BTU/scfm") on Flare G-D-1. Specifically, from February 1, 2006 through March 5, 2007, from March 7, 2007, through August 19, 2007 and on April 19, 2008, Flare G-D-1 was operated for a total period of 9,689 operating hours of which 2,244 hours (23 percent of the total operating time) were below the minimum net heating value. During this time period no unauthorized emissions from Flare G-D-1 were documented. The lowest recorded net heating value was 58.22 BTU/scfm on April 17, 2006.									
Base Penalty <u>\$10,000</u>										
> Environmental, Property, and Human Health Matrix										
OR Release Actual Potential	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="3">Harm</th> </tr> <tr> <th>Major</th> <th>Moderate</th> <th>Minor</th> </tr> <tr> <td style="text-align: center;">x</td> <td></td> <td></td> </tr> </table> Percent <u>25%</u>	Harm			Major	Moderate	Minor	x		
Harm										
Major	Moderate	Minor								
x										
> Programmatic Matrix										
Matrix Notes	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>Falsification</th> <th>Major</th> <th>Moderate</th> <th>Minor</th> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </table> Percent <u>0%</u>  Human health or the environment had the potential to be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation. Based on RG-350/08, 2008 Emissions Inventory Guidelines, a 93% destruction efficiency is assumed for a flare operating below the minimum net heating value.	Falsification	Major	Moderate	Minor					
Falsification	Major	Moderate	Minor							
Adjustment <u>\$7,500</u>										
<u>\$2,500</u>										
Violation Events										
mark only one with an x daily weekly monthly quarterly semiannual annual single event	Number of Violation Events <u>7</u> Number of violation days <u>563</u>  Violation Base Penalty <u>\$17,500</u>  Seven quarterly events are recommended for the one flare operated below the minimum net heating value.									
Good Faith Efforts to Comply										
extraordinary Ordinary N/A Notes	0.0% Reduction Before NOV NOV to EDRP/Settlement Offer (mark with x) The Respondent does not meet the good faith criteria for this violation.									
Violation Subtotal <u>\$17,500</u>										
Economic Benefit (EB) for this violation										
Estimated EB Amount	Statutory Limits Violation Final Penalty Total									
<u>\$10,351</u>	<u>\$29,400</u>									
This violation Final Assessed Penalty (adjusted for limits) <u>\$29,400</u>										

### Economic Benefit Worksheet

Respondent **Albemarle Corporation**  
 Case ID No. **38847**  
 Reg. Ent. Reference No. **RN100218247**  
 Media **Air**  
 Violation No. **1**

Percent Interest **5.0**  
 Years of Depreciation **15**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$100	1-Feb-2006	18-Jun-2009	3.38	\$1	\$23	\$24
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling	\$500	1-Feb-2006	18-Jun-2009	3.37	\$84	\$84	\$84
Remediation/Disposal				0.00	\$0	\$0	\$0
Permit Costs				0.00	\$0	\$0	\$0
Other (as needed)	\$50,000	1-Feb-2006	9-Mar-2010	4.10	\$10,253	\$0	\$10,253

Notes for DELAYED costs

Estimated cost for revising procedures and alarm systems (completed June 16 and 18, 2009) and installing a calorimeter to provide continuous readings of the BTU values. The date required is based on the initial date of non-compliance. The final date is the date the corrective actions were completed or are expected to be completed.

Item Description	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>					
Disposal			0.00	\$0	\$0
Personnel			0.00	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0
Supplies/equipment			0.00	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0
ONE-TIME avoided costs [3]			0.00	\$0	\$0
Other (as needed)			0.00	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

**\$50,600**

**TOTAL**

**\$10,361**

**Screening Date:** 10-Sep-2009      **Docket No.:** 2009-1515-AIR-E      **PCW**  
**Respondent:** Albemarle Corporation      *Policy Revision 2 (September 2002)*  
**Case ID No.:** 38347      *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.:** RN100218247  
**Media (Statute):** Air  
**Ent. Coordinator:** Nadia Hameed  
**Violation Number:** 2  
**Rule Cite(s):** 30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), Air Permit No. 18114, SC No. 10A, FOP No. 02285, Special Terms and Conditions 8, and Tex. Health & Safety Code § 382.085(b)  
**Violation Description:** Failed to maintain records. Specifically, the Respondent failed to provide and maintain the correct list of equipment components that were excluded from the Leak Detection and Repair monitoring program.  
**Base Penalty:** \$10,000

**Environmental, Property and Human Health Matrix**

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

**Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
			X	1%

**Matrix Notes:** Less than 30 percent of the rule requirement was not met.  
**Adjustment:** \$9,900

**Violation Events**      \$100

**Number of Violation Events:** 1      **Number of violation days:** 14  
**Violation Base Penalty:** \$100  
 mark only one with an x  

daily	
weekly	
monthly	
quarterly	
semi-annual	
annual	
single event	X

**Notes:** One single event is recommended based on the incomplete records.

**Good Faith Efforts to Comply**      25.0% Reduction      \$25

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

**Notes:** The Respondent completed the corrective actions on August 13, 2009, prior to the August 31, 2009, NOE date.

**Violation Subtotal:** \$75

**Economic Benefit (EB) for this violation:**      **Statutory Limit Test:**  
**Estimated EB Amount:** \$0      **Violation Final Penalty Total:** \$143  
**This Violation Final Assessed Penalty (adjusted for limits):** \$143

### Economic Benefit Worksheet

Respondent: **Ablemarle Corporation**  
 Case ID No. **38347**  
 Reg. Ent. Reference No. **RN100218247**  
 Media Air  
 Violation No. **2**

Percent Interest: **5.0**  
 Years of Depreciation: **15**

Item Cost    Date Required    Final Date    Yrs    Interest Saved    Overtime Costs    EB Amount

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime 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	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling				0.00	\$0	\$0	\$0
Remediation/Disposal				0.00	\$0	\$0	\$0
Permit Costs				0.00	\$0	\$0	\$0
Other (as needed)	\$100	30-Jul-2009	13-Aug-2009	0.04	\$0	\$0	\$0

Notes for DELAYED costs

Estimated cost for correcting the list of excluded components. The date required is based on the date of the investigation. The final date is the date the corrective actions were completed.

**Avoided Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime 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

	\$100	<b>TOTAL</b>	\$0
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**ED 8**





September 2002  
RG-253

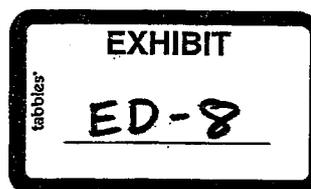
# Penalty Policy of the Texas Commission on Environmental Quality

STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify this is a true and correct copy of a  
Texas Commission on Environmental Quality (TCEQ)  
document, which is filed in the Records of the Commission.  
Given under my hand and the seal of office.

*Nick Thomas* FEB 23 2011

Nick Thomas, Custodian of Records  
Texas Commission on Environmental Quality



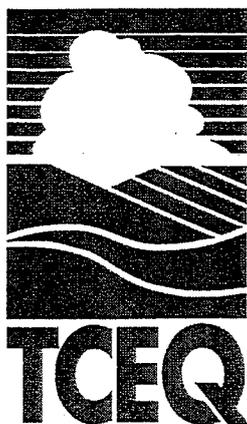
Enforcement Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

# Penalty Policy of the Texas Commission on Environmental Quality

Prepared by  
Enforcement Division

RG-253  
September 2002



**Kathleen Hartnett White, *Chairman***  
**R. B. "Ralph" Marquez, *Commissioner***  
**Larry R. Soward, *Commissioner***

**Margaret Hoffman, *Executive Director***

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Texas Commission on Environmental Quality  
Penalty Policy

Second Revision, Effective September 1, 2002

Contents

Introduction .....	1
Statutory Authorizations .....	1
Computing the Base Penalty Amount .....	2
Major/Minor Sources .....	3
Environmental/Property and Human Health Penalty Matrix .....	5
Categories of Harm .....	6
Programmatic Penalty Matrix .....	8
Determining the Number of Violation Events .....	9
Continuing Violations .....	9
Evaluating Adjustments to the Penalty Amount .....	11
Compliance history .....	11
Repeat violator.....	13
Culpability .....	13
Good-faith effort to comply .....	13
Economic benefit gained through noncompliance .....	14
Compliance history classification.....	15
Other factors that justice may require.....	15
Adjusted Total Penalty Amount Recommendation .....	16



**Introduction**

This document describes the policy of the Texas Commission on Environmental Quality (TCEQ) regarding the computation and assessment of administrative penalties. Enforcement actions may result from serious or unresolved violations discovered during an investigation, or from information that concerns violations and is gained from meetings related to permits. An investigation is a review or evaluation of information by the executive director or executive director's staff or agent regarding the compliance status of a site, and may take the form of a site assessment, file or record review, compliance investigation, or other review or evaluation of information. This document does not address when an enforcement action is initiated, but rather how TCEQ staff are to evaluate violations for the purpose of recommending administrative penalties to the commission.

This policy includes a description of how violations are evaluated in terms of harm and severity and how any proposed penalties are determined. It includes a discussion of what adjustments may be made to the base penalty amount after the review of case-specific information and information concerning the respondent.

**Statutory Authorizations**

The commission has the authority to assess administrative penalties under a number of statutes located in the Texas Water Code (TWC) and the Texas Health & Safety Code (THSC). These statutes include: TWC Chapters 7, 11, 12, 13, and 16; and THSC Chapters 341 and 371. These statutes provide the commission with the authority to assess penalties and set forth the factors that the commission must consider in determining the amount of penalty to assess (see chart below)

**Statutorily Authorized Penalties**

<b>Program</b>	<b>Statute/Chapter</b>	<b>Administrative penalties, per violation per day</b>	<b>Civil penalties, per violation per day</b>
Air Quality	TWC/7	\$0-10,000	\$50-25,000
Edwards Aquifer	TWC/7	\$0-10,000	\$50-25,000
Industrial and Hazardous Waste	TWC/7	\$0-10,000	\$50-25,000
Land over MSW Landfills	TWC/7	\$0-10,000	\$50-25,000
Medical Waste	TWC/7	\$0-10,000	\$50-25,000
Municipal Solid Waste	TWC/7	\$0-10,000	\$50-25,000
Petroleum Storage Tank	TWC/7	\$0-10,000	\$50-25,000
Radioactive Substances	TWC/7	\$0-10,000	\$50-25,000
Subsurface Excavation	TWC/7	\$0-10,000	\$50-25,000

Toxic Chemical Release Reporting	TWC/7	\$0-10,000	\$50-25,000
Underground Injection Control	TWC/7	\$0-10,000	\$50-25,000
Underground Water	TWC/7	\$0-10,000	\$50-25,000
Waste Tires	TWC/7	\$0-10,000	\$50-25,000
Water Quality	TWC/7	\$0-10,000	\$50-25,000
All Occupational Licenses	TWC/7	\$0-2,500	\$50-5,000
On-Site Sewage Disposal	TWC/7	\$0-2,500	\$50-5,000
Used Oil	TWC/7	\$0-2,500	\$50-5,000
Used Oil Filter	TH&SC/371, TWC/7	\$0-2,500	\$100-500
Water Saving Performance Standards	TWC/7	\$0-2,500	\$50-5,000
Weather Modification	TWC/7	\$0-2,500	\$50-5,000
Water Rights	TWC/11	\$0-5,000	\$0-5,000
Dam Safety	TWC/12	N/A	\$0-5,000
Public Water Utilities	TWC/13	0-\$500	\$100-5,000
Levees	TWC/16	\$0-1,000	\$0-1,000
Public Water Supply	TH&SC/341	\$50-1,000	\$50-1,000

**Computing the Base Penalty Amount**

Violations will be broken into two types--those that harm or have the potential to harm the environment and/or human health and those that are related to documentation. Because of this differentiation, the TCEQ will have two separate penalty matrices -- the Environmental/Property and Human Health Penalty Matrix and the Programmatic Penalty Matrix.

In the Environmental/Property and Human Health Penalty Matrix, the base penalty amount for violations is developed by first examining two factors: release and harm (damage). Release means the emission or discharge of pollutants into the environment or a public drinking water system; the unauthorized diversion, taking or storage of state water; or the unauthorized change of a flood elevation of a stream. A violation will be evaluated to determine whether there has been a release and will be categorized as either an actual release or a potential release. Actual is defined as "existing in fact or reality; not merely potential." Potential is defined as "existing in possibility; capable of development into actuality."

The second factor to assess is the degree of harm (damage) that has affected or could have affected human health, property associated with a water right or construction of a levee and/or environmental receptors. These two factors are incorporated into a penalty matrix from which the base penalty is determined.

The commission will also evaluate the appropriate penalty based upon the size of the respondent's site. Where the EPA has designated "major" facilities/sources from "minor" facilities/sources, the agency will utilize that distinction for the respondent's sites. The definitions used for each program area are described below. Individuals and operators are considered minor respondents unless otherwise noted. Anything not explicitly covered in this section will be determined on a case-by-case basis.

### Major/Minor Sources

#### Air

##### Major:

1. Any stationary facility that is a source of non-hazardous air pollutants which directly emits, or has the potential to emit, 100 tons per year or more of any air pollutant except in some non-attainment areas. In serious ozone nonattainment counties the threshold is 50 tons per year for volatile organic compounds (VOC) and nitrogen oxides (NOx). In severe ozone nonattainment counties the threshold is 25 tons per year for VOC and NOx.
2. For the hazardous air pollutants listed in the Federal Clean Air Act, a source that emits or has the potential to emit 10 tons per year or more of a single pollutant or 25 tons per year or more of any combination of pollutants.
3. For purposes of the penalty policy, the respondent's site is considered major if any source at the site is major, even if the violation(s) is not for that source.

Minor: Defined as any non-major source.

#### Edwards Aquifer

Major: A construction project disturbing 5 acres or greater.

Minor: A construction project disturbing less than 5 acres.

#### Industrial and Hazardous Waste

Major: A generator of more than 12,000 kg of hazardous waste on an annual basis. Commercial industrial facilities are majors.

Minor: A generator of 12,000 kg or less of hazardous waste on an annual basis.

#### Levees

Major: Levee or other improvement constructed in the 100 year floodway designed for flood protection for a 100 year flood or greater.

Minor: Levee or other improvement constructed in the 100 year floodway designed for flood protection for less than a 100 year flood.

#### Municipal Solid Waste

Major: A municipal solid waste landfill accepting more than 20 tons of municipal solid waste disposed of daily, based on an annual average.

Minor: A municipal solid waste landfill accepting less than 20 tons of municipal solid waste disposed of daily, based on an annual average.

#### Petroleum Storage Tank

Major: An underground storage tank facility that has a monthly throughput of more than 50,000 gallons.

Minor: An underground storage tank facility that has a monthly throughput of less than 50,000 gallons.

#### Public Water Supply

Major: A retail public utility serving more than 1,100 total connections.

Minor: A retail public utility serving 1,100 or fewer total connections. In addition, non-retail public water supply entities will be classified as minor unless specific circumstances exist that would cause them to be classified as majors.

#### Radioactive Waste

All facilities will be considered majors.

#### Underground Injection Control

All Class I and Class III facilities will be considered majors. Class V facilities will be determined on a site-specific evaluation.

#### Waste Tires

Major: A facility with greater than 500 tires.

Minor: A facility with less than or equal to 500 tires.

**Water Quality (including Concentrated Animal Feeding Operations (CAFO))**

Major: Municipal facilities with a daily average flow of 1 million gallons per day or greater are considered major facilities. Industrial/CAFO facilities are classified as major or minor facilities using a point scale used by EPA Region 6. The TCEQ Water Quality Division uses EPA Region 6's classification schedule to determine if a facility is defined as major or minor. All water quality permittees are designated as major or minor.

Minor: Municipal facilities with a daily average flow less than 1 million gallons per day. Industrial/CAFO facilities are classified upon permitting as major or minor as described above.

**Water Rights**

Major: A water right of greater than 5,000 acre-feet.

Minor: A water right of less than or equal to 5,000 acre-feet.

**Environmental/Property and Human Health Matrix**

	Major Harm	Moderate Harm	Minor Harm
	Major/Minor Respondents	Major/Minor Respondents	Major/Minor Respondents
Actual release	100% / 50%	50% / 25%	25% / 10%
Potential release	50% / 25%	25% / 10%	10% / 5%

Harm is categorized as major, moderate, or minor. Definitions for each category of harm are provided below.

**Categories of Harm**

	<b>Actual Release</b>	<b>Potential Release</b>
<b>Major Harm</b>	Human health or the environment has been exposed to pollutants which <b>exceed</b> levels that are protective of human health or environmental receptors as a result of the violation. Unauthorized diversion, taking, or storage of state water or an unauthorized change in flood elevation of a stream which deprives others of water, severely affects aquatic life, or results in a safety hazard, property damage, or economic loss.	Human health or the environment will or could be exposed to pollutants which <b>would exceed</b> levels that are protective of human health or environmental receptors as a result of the violation. Potential for unauthorized diversion, taking, or storage of state water or an unauthorized change in flood elevation of a stream which would deprive others of water, severely affect aquatic life or result in a safety hazard, property damage, or economic loss.
<b>Moderate Harm</b>	Human health or the environment has been exposed to <b>significant</b> amounts of pollutants which <b>do not exceed</b> levels that are protective of human health or environmental receptors as a result of the violation. Unauthorized diversion, taking, or storage of a significant amount of state water or a significant unauthorized change in flood elevation of a stream which does not detrimentally affect aquatic life or result in a safety hazard, property damage, or economic loss.	Human health or the environment will or could be exposed to <b>significant</b> amounts of pollutants which <b>would not exceed</b> levels that are protective of human health or environmental receptors as a result of the violation. Potential for unauthorized diversion, taking, or storage of a significant amount of state water or a significant unauthorized change in flood elevation of a stream which would not detrimentally affect aquatic life or result in a safety hazard, property damage, or economic loss.
<b>Minor Harm</b>	Human health or the environment has been exposed to <b>insignificant</b> amounts of pollutants which <b>do not exceed</b> levels that are protective of human health or environmental receptors as a result of the violation. Unauthorized diversion, taking, or storage of an insignificant amount of state water or an insignificant unauthorized change in flood elevation of a stream which does not detrimentally affect aquatic life or result in a safety hazard, property damage, or economic loss.	Human health or the environment will or could be exposed to <b>insignificant</b> amounts of pollutants which <b>would not exceed</b> levels that are protective of human health or environmental receptors as a result of the violation. Potential for unauthorized diversion, taking, or storage of an insignificant amount of state water or an insignificant unauthorized change in flood elevation of a stream which would not detrimentally affect aquatic life or result in a safety hazard, property damage, or economic loss.

The following discussion is to assist in the practical application of the Environmental, Property and Human Health Penalty Matrix. Release of "significant" and "insignificant" amounts of pollutants is defined in terms of the degree of impact on affected resources.

#### Assessment of Impact on Affected Resources

If sampling data are available and corresponding regulatory standards are applicable, an assessment of the impact should be based, at least in part, on such data and corresponding standards.

In the absence of such data and/or standards, the degree of impact should be evaluated in terms of the observed and documented effects the release has on the resource. Where both data and observed effects are available, both should be given due consideration in assessing impact. For releases where neither data nor direct observation are available, the degree of impact must be evaluated in light of scientific knowledge of the expected effects of such a release.<sup>1</sup>

#### Definitions<sup>2</sup>

- An affected resource is human health, economic activity, normal use or enjoyment of property and/or other environmental resources (e.g., air quality, public or privately-owned water or land) that have been adversely impacted by a pollutant release.
- A release of a significant amount of pollutants is a release of pollutants in types or quantities that results in a loss of most or all of the quantity and/or quality of the affected resource(s).
- A release of an insignificant amount of pollutants is a release of pollutants in types or quantities that results in little or no loss of the quantity and/or quality of the affected resource(s).

#### Assessing Whether a Release Amount Is Significant or Insignificant

- Consider the release and the affected resource in light of the questions below.
- This is not a checklist or decision tree. The individual questions are not weighted, and must be considered as a whole.

---

<sup>1</sup> For example, VOC emissions are known to contribute to ozone formation, but cause no observable immediate impacts. A spill of liquid mercury may not contaminate soil or water, but is presumed to partially vaporize into the ambient air, where it may be harmful if inhaled.

<sup>2</sup> These definitions do not directly address pollutant concentrations or protective levels. As noted in the section Distinguishing Major Harm from Moderate or Minor Harm, if a release of a significant amount of pollutants causes pollutant concentration(s) to exceed levels that are protective of human health or environmental receptors, the release falls into the major harm category.

**(1) The Released Pollutant**

Questions to Ask	Factors to Consider
What was released?	Consider the available information about the substance's toxicity or other qualities that could adversely impact the affected resource. The greater the released material's toxicity, the more likely that a release will be a "significant amount."
How much was released?	Was the substance released in a quantity sufficient to cause the adverse effects associated with it? The larger the quantity released, the more likely that the release will be a "significant amount."

**(2) The Affected Resource**

Questions to Ask	Factors to Consider
What was the affected resource?	Consider the definition of an affected resource. Was human health or economic activity adversely impacted? If so, what and how? Were normal use or enjoyment of property and/or environmental resources adversely impacted? If so, what and how?
How adversely was the affected resource impacted?	Consider the sensitivity, value and/or usability of the affected resource, and any data or scientific knowledge that assesses the actual or expected impact of the release. The more sensitive, valuable and/or usable the resource, the more likely that a release that impacts the resource will be considered a "significant amount."

**Distinguishing Major Harm from Moderate or Minor Harm**

For the release (or potential release) of pollutants to be considered major, the pollutant must be present in concentrations that exceed levels that are protective of human health or environmental receptors, and the pollutant must be present in significant amounts as defined in this guidance document.

The following table summarizes the criteria for Major, Moderate and Minor harm.

Harm	significant amounts of pollutants*	exceeds levels that are protective
Major	Yes	Yes
Moderate	Yes	No
Minor	No	No

\* "significant amount" as defined in the definitions

In the **Programmatic Penalty Matrix**, violations will be categorized as major, moderate, or minor, based upon the degree of noncompliance. Programmatic violations include, for example, a failure to submit reports, a failure to maintain records, or a failure to obtain a permit or other authorization.

**Programmatic Penalty Matrix**

<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
<b>Major/Minor Respondent</b>	<b>Major/Minor Respondent</b>	<b>Major/Minor Respondent</b>
25% / 10%	10% / 5%	1% / 1%

In the context of the penalty matrix, programmatic major means that all or almost all (greater than 70 percent) of a rule or permit requirement is not met, programmatic moderate means that much (30 to 70 percent) of a rule or permit requirement is not met, and programmatic minor means that most, but not all (at least 70 percent), of a rule or permit requirement is met. One exception to the use of this matrix is that the falsification of records will be assessed at 100 percent of the statutory maximum penalty.

Calculation: Each violation included in the enforcement action will be evaluated and categorized as actual release, potential release, or programmatic and then as major, moderate, or minor. The appropriate percentage (see the matrices above) will be multiplied by the highest penalty amount allowed by the applicable statute (see discussion in "Statutory Authorizations") to determine the penalty amount for each specific violation. The total of all the violation penalty calculations will be the base penalty amount.

Exception regarding rock crushers and concrete batch plants: TEX. WATER CODE § 5.5145(b) states, "The amount of the penalty for operating a rock crusher or a concrete batch plant that performs wet batching, dry batching, or central mixing, that is required to obtain a permit under Section 382.0518, Health and Safety Code, and that is operating without the required permit is \$10,000. Each day that a continuing violation occurs is a separate violation." Under these circumstances, the required statutory limit of \$10,000 will be utilized for every day of the unauthorized activity.

**Determining the Number of Violation Events**

The number of violation events that will be assessed a penalty depends on the number of times the violation is observed, the specific requirement violated, the duration of the violation, and other case information.

Certain violations will typically be considered discrete events. For these violations, one penalty event will be assessed for every documented observation. Discrete violations are situations that are observed and documented during an investigation - a discrete interval in time. These violations involve practices or actions that do not occur continuously. If they recur, they do so in individual instances that are separate in time. Examples of violations that would be discrete events are the failure to submit annual reports, the failure to collect or report monitoring data, the failure to perform a hazardous waste determination where required, and the failure to show a certificate of self-certification prior to accepting a fuel drop. For discretely occurring violations, one penalty event will be assessed for every documented observation of the noncompliance (for example, for each sample analysis documenting a violation).

Other violations are considered to be continuing. These violations are not constrained by documented observations of the noncompliance. Examples of violations that would be considered to be continuing are the exceeding of permitted discharge or emission limits, groundwater contamination, unauthorized discharges/releases, endangerment, the commingling of good and bad water in a public water supply, operating without a required permit, and other such violations. For continuing violations, the number of

events will be linked to the level of impact of the violation by considering the violation as if it recurred with the frequency shown in the chart below:

**Continuing Violations**

	<b>Harm or Severity</b>	<b>Number of Events</b>
<b>Actual Releases</b>	Major	Up to daily
	Moderate	Up to monthly
	Minor	Up to quarterly
<b>Potential Releases</b>	Major	Up to monthly
	Moderate	Up to quarterly
	Minor	Single event
<b>Programmatic</b>	Major	Up to daily
	Moderate	Up to quarterly
	Minor	Single event

The duration of events concerning continuous violations, for the purposes of preparing an enforcement action, may begin with the initial date of noncompliance with a requirement, rule, or permit and extend up to the time that the enforcement documents are prepared.

In practice, continuous violations will be assessed beginning with the documented date of noncompliance (i.e., sample results, record review) or the date that the respondent "should have known," whichever is appropriate, as the beginning point. The respondent is always considered knowledgeable of permit conditions.

The date the respondent returned to compliance or the enforcement screening date, whichever is appropriate, will be the endpoint for the assessed events. Utilizing this date will assure that no one will be impacted by the order in which cases are prioritized within the agency.

The duration of events will be revised, as appropriate, to reflect extended noncompliance when cases fail to settle expeditiously and/or prior to referral to the State Office of Administrative Hearings. Note: Discrete violations are not revised because they are considered single events.

To determine the number of events, divide the appropriate time frame into the duration of the violation. For this determination, any part of a day equals a "day;" any part of a month equals a "month;" any part of a quarter equals a "quarter." For example an actual minor that is assessed as a quarterly event will have 5 quarters for a violation that continued for 13 months.

Calculation: Multiply the base penalty amount by the number of penalty events determined for the violation being considered. Do this step for each violation included in the enforcement action. Total the base penalty amounts to obtain subtotal 1.

**Evaluating Adjustments to the Penalty Amount**

Any adjustments to the penalty amounts will be made after a base penalty multiplied by the number of events is established for all violations included in the enforcement action. Adjustments to the penalty amount may be made based upon the following factors relating to the respondent:

- compliance history
- repeat violator
- culpability
- good-faith effort to comply
- economic benefit gained through noncompliance
- compliance history classification
- other factors as justice may require

**Compliance History**

Staff will develop a compliance history on the respondent utilizing the format found in 30 TEX. ADMIN. CODE § 60.1, no matter what program area is under consideration in the enforcement action. Based upon the compliance history, staff will determine the penalty enhancement for the site, mobile unit, or individual who is required to be registered, certified, or licensed by TCEQ prior to performing certain activities, by evaluating the number of each of the components, and totaling the percentage adjustments. If the total is less than zero, then the penalty enhancement will default to zero. The percentage adjustment for each type of component is specified in the following table:

**Compliance History Enhancement For the Site Under Enforcement**

Component	Percentage Adjustment	Plus or minus Adjustment?
Written NOV's with same or similar violations as those in the current enforcement action	5% for each NOV	plus
Other written NOV's	2% for each NOV	plus
Any agreed final enforcement orders containing a denial of liability	20% for each order	plus
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	25% for each order	plus
Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government	30% for each court judgment and consent decree	plus

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	35% for each court judgment and consent decree	plus
Any criminal convictions of this state or the federal government	50% for each count	plus
Final enforcement orders, court judgments, and criminal convictions relating to violations of environmental laws of other states	N/A	N/A
Chronic excessive emissions events	25% for each event	plus
Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995	1% for each audit	minus
Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995	2% for each audit for which violations are disclosed	minus
Environmental management systems in place for one year or more	10%	minus
Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	10%	minus
Participation in a voluntary pollution reduction program	5%	minus
Early compliance with, or offer of a product that meets future state or federal government environmental requirements	5%	minus

Calculation: Multiply subtotal 1 by the total percentage adjustment to obtain subtotal 2.

**Repeat Violator**

When a respondent is designated as a repeat violator at the site which is under enforcement, then the recommended administrative penalty for the case will be enhanced by 25 percent. Repeat violator designation will be determined according to 30 TEX. ADMIN. CODE § 60.2(d).

Calculation: Multiply subtotal 1 by 25 percent or 0 percent to obtain subtotal 3.

**Culpability**

In assessing culpability, staff will determine whether the respondent could have reasonably anticipated and avoided the violation(s). This determination will be made on a site-specific basis and will examine a five-year history (the five-year period preceding the date of initiating an enforcement action with an initial settlement

offer or the filing date of an Executive Director's Preliminary Report (EDPR), whichever occurs first). Culpability will be determined for mobile units, and for individuals for those who are required to be registered, certified, or licensed by TCEQ prior to performing certain activities, rather than a site-specific basis. Staff will determine whether documentation that indicates culpability exists (e.g., contractor notes; agency letters; respondent notes; investigations at other locations [for mobile units and for individuals who are required to be registered, certified, or licensed by TCEQ prior to performing certain activities]).

If culpability exists, then 25 percent will be added to the penalty amount; otherwise, nothing will be added to the penalty amount.

Note: Other forms of culpability, such as notices of violation (NOVs) and orders, are included in compliance history.

Calculation: Multiply subtotal 1 by 25 percent or 0 percent as appropriate to obtain subtotal 4.

### **Good-Faith Effort to Comply**

In assessing good-faith efforts to comply, staff will consider the respondent's efforts to return the site to complete compliance with all applicable rules and regulations cited in the enforcement action. Thus, any reduction will be applied to all violations and events. The analysis of good-faith efforts involves two factors: the timeliness of the respondent's action(s) and the quality of that action(s). Accordingly, the respondent will be given credit for timeliness, quality, or both.

Timeliness is defined by the point when the respondent completed action to correct the violations. The following are the two scenarios that will be considered:

- Corrective actions are completed before there is an executive director's preliminary report (EDPR) or an initial settlement offer, but the actions are completed after the issuance of an NOV.
- Corrective actions are completed as soon as violations are identified and before the issuance of an NOV.

Quality is defined as the degree to which the respondent took action. The two categories of quality are extraordinary and ordinary. Extraordinary is defined as action taken by the respondent which goes beyond what would be expected under the rules. Ordinary is defined as action taken by the respondent to correct the violations as expected under the rules. Good-faith effort will not be considered for cases involving only discrete violations as defined by this policy.

The following matrix describes how much of a reduction will be given for good-faith efforts. The maximum reduction is 50 percent. Good faith efforts will only be considered if the respondent has achieved compliance with applicable rules and regulations cited in the enforcement action.

**Percentage Reductions for Timeliness**

<b>Quality of Action</b>	<b>Action Before NOV</b>	<b>Action Between NOV &amp; EDPR/Settlement Offer</b>
<b>Extraordinary</b>	50%	25%
<b>Ordinary</b>	25%	10%

Calculation: Multiply subtotal 1 by the appropriate good-faith percentage reduction to obtain subtotal 5.

**Economic Benefit**

Economic benefit is defined as monetary gain derived from a failure to comply with TCEQ rules or regulations. Economic benefit may include any or all of the following: (1) the return a respondent can earn by delaying the capital costs of pollution control equipment; (2) the return a respondent can earn by delaying a one-time expenditure; and (3) the return a respondent can earn by avoiding periodic costs.

To determine whether a respondent has gained an economic benefit (during the alleged violation period), staff must evaluate the following issues for each violation:

1. Did the respondent avoid or delay capital outlay for item(s) specifically required by a permit or rule that is applicable to the facility or unit in question?
2. Did the respondent gain any interest by avoiding or delaying capital outlay for item(s) specifically required by a permit or rule that is applicable to the facility or unit in question?
3. Did the respondent gain an economic advantage over its competitors?
4. Did the respondent avoid or delay disposal, maintenance, and/or operating costs?
5. Did the respondent receive increased revenue due to noncompliance?
6. Did the respondent avoid the purchase of financial assurance for item(s) specifically required by a permit or rule that is applicable to the facility or unit in question?

If the answer is "yes" to any of the above questions, then staff will estimate the overall economic benefit gained. Only capital expenditures, one-time nondepreciable expenditures, periodic costs, and interest gained will be evaluated in the calculation of economic benefit.

Capital expenditures will include all depreciable investment outlays necessary to achieve compliance with the environmental regulation or permit. Depreciable capital investments are usually made for things that wear out, such as buildings, equipment, or other long-lived assets. Typical environmental capital investments include groundwater monitoring wells, stack scrubbers, and wastewater treatment systems.

One-time nondepreciable expenditures include delayed costs the respondent should have made earlier (to prevent the violations) which need only be made once and are not depreciable (i.e., do not wear out). Such an expenditure could be purchasing land, setting up a record-keeping system, removing illegal discharges of dredged and fill material, disposing of soil from a hazardous waste site, or providing initial training to employees.

Periodic costs are recurring costs associated with operating and maintaining the required pollution control equipment.

Once the economic benefit has been estimated and totaled for all violations included in the enforcement actions, it should be compared to the following criteria, and the penalty amount will be increased accordingly. The economic adjustment factor will be capped so the adjustment amount does not exceed the economic benefit gained.

**Economic Benefit Matrix**

<b>% Adjustment</b>	<b>Dollar Range of Benefit</b>
None	Less than \$15,000
50%	Equal to or greater than \$15,000

Calculation: Determine the estimate of the economic benefit of each violation included in the enforcement action, add all the economic benefit totals, then determine the range that the estimate fits for each violation, and multiply the associated percentage, based upon culpability, by the base penalty amount to obtain subtotal 6.

**Compliance History Classification**

The administrative penalty will be modified, based upon the classification of the person who is the respondent in the enforcement action, as specified in the following matrix. Compliance history classification of the respondent will be determined according to 30 TEX. ADMIN. CODE § 60.2(f).

**Compliance History Classification Adjustment**

<b>Respondent's Classification</b>	<b>Percentage Adjustment</b>
High Performer	-10%
Average Performer	0% (no adjustment)
Poor Performer	+10%

Calculation: Multiply subtotal 1 times the appropriate percentage to obtain subtotal 7.

A final subtotal is determined by adding subtotal 1, subtotal 2, subtotal 3, subtotal 4, and subtotal 6, subtracting subtotal 5, and adding or subtracting, as appropriate, subtotal 7.

**Other Factors That Justice May Require**

The staff may recommend adjustment of the penalty amount, on a case-by-case basis, upon a consideration of factors unique to the situation. This adjustment may result in an increase or decrease of the penalty amount.

A downward adjustment due to "other factors that justice may require" may be appropriate when, for example, the TCEQ is notified of the violation(s) by the respondent. If the notification is not required by statute, permit, or rule, staff may recommend a downward adjustment.

A downward adjustment due to "other factors that justice may require" may be appropriate when, for example, a respondent has purchased a noncompliant water or wastewater facility as part of regionalization of service. Normally, respondents inherit the compliance history of purchased facilities but there may be circumstances where the resulting penalty does not reflect the efforts of the new provider and staff may recommend a downward adjustment.

An upward adjustment due to "other factors that justice may require" may be appropriate when, for example, a respondent who owns a station that conducts state inspections issued a motor vehicle inspection certificate for a motor vehicle without conducting all emission tests. If it is determined that the failure to conduct required emission testing was intentional, staff may recommend an upward adjustment.

Calculation: Multiply the final subtotal by the recommended percentage to obtain the final penalty amount.

**Adjusted Total Penalty Amount Recommendation**

The final penalty amount will be checked against the minimum and maximum penalty amounts allowed by statute per violation per day in order to obtain the final assessed penalty.

1910

Received of the Treasurer of the Board of Education the sum of \$100.00 for the year 1910.

Witness my hand and seal this 1st day of January 1910.

John J. ...  
Superintendent of Schools