

**EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 56942**  
**BNSF Railway Company and Fort Worth & Western Railroad Company**  
**RN110494770**  
**Docket No. 2018-1589-AIR-E**

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**Order Type:**

Agreed Order

**Media:**

AIR

**Small Business:**

No

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

on a railway spur approximately 732 feet southeast of the intersection of Floyd Street and Powell Cemetery Road, Tolar, Hood County

**Type of Operation:**

railway diesel engines

**Other Significant Matters:**

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

**Texas Register Publication Date:** March 20, 2020

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$3,750

**Total Paid to General Revenue:** \$3,750

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

**Compliance History Classifications:**

CN600276901 (BNSF Railway)

Person/CN – Satisfactory

Site/RN – N/A

CN605477777 (Fort Worth & Western Railroad)

Person/CN – Unclassified

Site/RN – N/A

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** April 2014

**EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 56942**  
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**RN110494770**  
**Docket No. 2018-1589-AIR-E**

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**Investigation Information**

**Complaint Date(s):** August 28, 2018; November 6, 2018; February 18, 2019;  
February 20, 2019; July 20, 2019

*Complaint Information:* Complainant alleges that idling train engines near their property are causing odor nuisance issues and they are having difficulty breathing, headaches, puffy eyes, and sinus issues.

**Date(s) of Investigation:** August 28, 2018

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

**Date(s) of NOE(s):** November 2, 2018

**Violation Information**

Failed to prevent nuisance odor conditions [TEX. HEALTH & SAFETY CODE § 382.085(a) and (b) and 30 TEX. ADMIN. CODE § 101.4].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

Implemented measures on August 29, 2018, designed to minimize the placement of idling railway diesel engines at the Site to minimize nuisance odor conditions.

**Technical Requirements:**

None

**Litigation Information**

**Date Petition(s) Filed:** August 26, 2019

**Date Green Card(s) Signed:** August 28, 2019

**Date Answer(s) Filed:** September 17, 2019

**Settlement Date:** February 20, 2020

**Contact Information**

**TCEQ Attorneys:** Clayton Smith, Litigation Division, (512) 239-3400  
Garrett Arthur, Public Interest Counsel, (512) 239-6363

**TCEQ Litigation Division Agenda Coordinator:** Janice Hernandez, (512) 239-2575

**TCEQ Enforcement Coordinator:** Maggie Dennis, Enforcement Division, (817) 588-5892

**TCEQ Regional Contact:** Jaret Wessel, Dallas/Fort Worth Regional Office, (817) 588-5885

**Respondent Contact:** Brooke L. Gaede, Senior General Attorney I, BNSF Railway Company, 2500 Lou Menk Drive, AOB-3, Fort Worth, Texas 76131

Kevin Erasmus, President and CEO, Fort Worth & Western Railroad Company, 6300 Ridglea Place, Suite 1200, Fort Worth, Texas 76116

**Respondent's Attorney:** Laura L. LaValle, Beveridge & Diamond, P.C., 400 West 15th Street, Suite 1410, Austin, Texas 78701



# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

**TCEQ**

|              |                 |            |                  |            |
|--------------|-----------------|------------|------------------|------------|
| <b>DATES</b> | <b>Assigned</b> | 5-Nov-2018 |                  |            |
|              | <b>PCW</b>      | 9-Mar-2019 | <b>Screening</b> | 9-Nov-2018 |
|              |                 |            | <b>EPA Due</b>   |            |

## RESPONDENT/FACILITY INFORMATION

|                             |  |                           |       |  |
|-----------------------------|--|---------------------------|-------|--|
| <b>Respondent</b>           | BNSF Railway Company and Fort Worth & Western Railroad Company |                           |       |  |
| <b>Reg. Ent. Ref. No.</b>   | RN110494770  |                           |       |  |
| <b>Facility/Site Region</b> | 4-Dallas/Fort Worth  | <b>Major/Minor Source</b> | Minor |  |

## CASE INFORMATION

|  |                 |                              |                    |
|--|-----------------|------------------------------|--------------------|
| <b>Enf./Case ID No.</b>                | 56942           | <b>No. of Violations</b>     | 1                  |
| <b>Docket No.</b>                      | 2018-1589-AIR-E | <b>Order Type</b>            | 1660               |
| <b>Media Program(s)</b>                | Air             | <b>Government/Non-Profit</b> | No                 |
| <b>Multi-Media</b>                     |                 | <b>Enf. Coordinator</b>      | Raime Hayes-Falero |
|  |                 | <b>EC's Team</b>             | Enforcement Team 5 |
| <b>Admin. Penalty \$ Limit Minimum</b> | \$0             | <b>Maximum</b>               | \$25,000           |

## Penalty Calculation Section

|   |                   |         |
|---|-------------------|---------|
| <b>TOTAL BASE PENALTY (Sum of violation base penalties)</b> | <b>Subtotal 1</b> | \$3,750 |
|---|-------------------|---------|

## 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> | 0.0% | <b>Adjustment</b> | <b>Subtotals 2, 3, &amp; 7</b> | \$0 |
|---------------------------|------|-------------------|--------------------------------|-----|

|              |                                       |
|--------------|---------------------------------------|
| <b>Notes</b> | No adjustment for compliance history. |
|--------------|---------------------------------------|

|                    |    |      |                    |                   |     |
|--------------------|----|------|--------------------|-------------------|-----|
| <b>Culpability</b> | No | 0.0% | <b>Enhancement</b> | <b>Subtotal 4</b> | \$0 |
|--------------------|----|------|--------------------|-------------------|-----|

|              |   |
|--------------|---|
| <b>Notes</b> | The Respondents do not meet the culpability criteria. |
|--------------|---|

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

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

|                              |          |                                   |
|------------------------------|----------|-----------------------------------|
| Total EB Amounts             | \$388    | *Capped at the Total EB \$ Amount |
| Estimated Cost of Compliance | \$10,000 |                                   |

|                             |                       |         |
|-----------------------------|-----------------------|---------|
| <b>SUM OF SUBTOTALS 1-7</b> | <b>Final Subtotal</b> | \$3,750 |
|-----------------------------|-----------------------|---------|

|   |      |                   |     |
|---|------|-------------------|-----|
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b> | 0.0% | <b>Adjustment</b> | \$0 |
|---|------|-------------------|-----|

Reduces or enhances the Final Subtotal by the indicated percentage.

|              |  |
|--------------|--|
| <b>Notes</b> |  |
|--------------|--|

|                             |         |
|-----------------------------|---------|
| <b>Final Penalty Amount</b> | \$3,750 |
|-----------------------------|---------|

|                                   |                               |         |
|-----------------------------------|-------------------------------|---------|
| <b>STATUTORY LIMIT ADJUSTMENT</b> | <b>Final Assessed Penalty</b> | \$3,750 |
|-----------------------------------|-------------------------------|---------|

|                 |  |                  |                   |     |
|-----------------|--|------------------|-------------------|-----|
| <b>DEFERRAL</b> |  | <b>Reduction</b> | <b>Adjustment</b> | \$0 |
|-----------------|--|------------------|-------------------|-----|

Reduces the Final Assessed Penalty by the indicated percentage.

|              |  |
|--------------|--|
| <b>Notes</b> | Deferral not offered for non-expedited settlement. |
|--------------|--|

|                        |         |
|------------------------|---------|
| <b>PAYABLE PENALTY</b> | \$3,750 |
|------------------------|---------|

|                                |  |                   |                 |                                       |
|--------------------------------|--|-------------------|-----------------|---------------------------------------|
| <b>Screening Date</b>          | 9-Nov-2018   | <b>Docket No.</b> | 2018-1589-AIR-E | <b>PCW</b>                            |
| <b>Respondent</b>              | BNSF Railway Company and Fort Worth & Western Railroad Company |                   |                 | <i>Policy Revision 4 (April 2014)</i> |
| <b>Case ID No.</b>             | 56942  |                   |                 | <i>PCW Revision March 26, 2014</i>    |
| <b>Reg. Ent. Reference No.</b> | RN110494770  |                   |                 |                                       |
| <b>Media</b>                   | Air  |                   |                 |                                       |
| <b>Enf. Coordinator</b>        | Raime Hayes-Falero   |                   |                 |                                       |

### Compliance History Worksheet

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

| Component                     | Number of...   | Number | Adjust. |
|-------------------------------|--|--------|---------|
| NOVs                          | Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )  | 0      | 0%      |
|                               | Other written NOVs   | 0      | 0%      |
| Orders                        | Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )  | 0      | 0%      |
|                               | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0      | 0%      |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )                               | 0      | 0%      |
|                               | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government  | 0      | 0%      |
| Convictions                   | Any criminal convictions of this state or the federal government ( <i>number of counts</i> )   | 0      | 0%      |
| Emissions                     | Chronic excessive emissions events ( <i>number of events</i> )   | 0      | 0%      |
| Audits                        | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )     | 0      | 0%      |
|                               | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )  | 0      | 0%      |
| 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)** 0%

#### >> Repeat Violator (Subtotal 3)

N/A

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

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

Satisfactory Performer

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

#### >> Compliance History Summary

**Compliance History Notes**

No adjustment for compliance history.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

#### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 0%

|                                |   |                                       |                 |            |
|--------------------------------|---|---------------------------------------|-----------------|------------|
| <b>Screening Date</b>          | 9-Nov-2018  | <b>Docket No.</b>                     | 2018-1589-AIR-E | <b>PCW</b> |
| <b>Respondent</b>              | BNSF Railway Company and Fort Worth & Western Railroad Company  |                                       |                 |            |
| <b>Case ID No.</b>             | 56942   | <i>Policy Revision 4 (April 2014)</i> |                 |            |
| <b>Reg. Ent. Reference No.</b> | RN110494770   | <i>PCW Revision March 26, 2014</i>    |                 |            |
| <b>Media</b>                   | Air   |                                       |                 |            |
| <b>Enf. Coordinator</b>        | Raime Hayes-Falero  |                                       |                 |            |
| <b>Violation Number</b>        | 1   |                                       |                 |            |
| <b>Rule Cite(s)</b>            | 30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(a) and (b)  |                                       |                 |            |
| <b>Violation Description</b>   | Failed to prevent nuisance odor conditions. Specifically, on August 28, 2018, TCEQ staff conducted an odor survey at an off-site location; detected light to moderate offensive diesel odors from the idling railway diesel engines; and experienced a headache, irritated lungs, chemical taste in their mouth, and burning/watery eyes, resulting in the confirmation of a nuisance odor condition. |                                       |                 |            |
| <b>Base Penalty</b>            |   |                                       |                 | \$25,000   |

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

|           |                |             |       |          |       |                      |
|-----------|----------------|-------------|-------|----------|-------|----------------------|
| <b>OR</b> |                | <b>Harm</b> | Major | Moderate | Minor |                      |
|           | <b>Release</b> |             |       |          |       |                      |
|           | Actual         |             | x     |          |       | <b>Percent</b> 15.0% |
|           | Potential      |             |       |          |       |                      |

**>> Programmatic Matrix**

|  |               |       |          |       |                     |
|--|---------------|-------|----------|-------|---------------------|
|  | Falsification | Major | Moderate | Minor |                     |
|  |               |       |          |       | <b>Percent</b> 0.0% |

|              |   |
|--------------|---|
| Matrix Notes | Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation. |
|--------------|---|

**Adjustment** \$21,250

\$3,750

**Violation Events**

|                            |   |  |   |                          |
|----------------------------|---|--|---|--------------------------|
| Number of Violation Events | 1 |  | 1 | Number of violation days |
|----------------------------|---|--|---|--------------------------|

|  |              |   |  |  |
|--|--------------|---|--|--|
|  | daily        |   |  | <b>Violation Base Penalty</b> <span style="border: 1px solid black; padding: 2px 10px;">\$3,750</span> |
|  | weekly       |   |  |  |
|  | monthly      |   |  |  |
|  | quarterly    |   |  |  |
|  | semiannual   |   |  |  |
|  | annual       |   |  |  |
|  | single event | x |  |  |

One single event is recommended.

**Good Faith Efforts to Comply**

|               |                               |  |   |
|---------------|-------------------------------|--|---|
|               | <b>0.0%</b>                   |  | <b>Reduction</b> <span style="border: 1px solid black; padding: 2px 10px;">\$0</span> |
|               | <small>Before NOE/NOV</small> | <small>NOE/NOV to EDPRP/Settlement Offer</small> |   |
| Extraordinary |                               |  |   |
| Ordinary      |                               |  |   |
| N/A           | x                             |  |   |

|       |   |
|-------|---|
| Notes | The Respondents do not meet the good faith criteria for this violation. |
|-------|---|

**Violation Subtotal** \$3,750

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

|                            |       |   |
|----------------------------|-------|---|
| <b>Estimated EB Amount</b> | \$388 | <b>Statutory Limit Test</b>   |
|                            |       | <b>Violation Final Penalty Total</b> <span style="border: 1px solid black; padding: 2px 10px;">\$3,750</span>                               |
|                            |       | <b>This violation Final Assessed Penalty (adjusted for limits)</b> <span style="border: 1px solid black; padding: 2px 10px;">\$3,750</span> |

# Economic Benefit Worksheet

**Respondent** BNSF Railway Company and Fort Worth & Western Railroad Company  
**Case ID No.** 56942  
**Reg. Ent. Reference No.** RN110494770  
**Media** Air  
**Violation No.** 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0              | 15                    |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Costs Saved | 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)        | \$10,000 | 28-Aug-2018 | 7-Jun-2019 | 0.78 | \$388 | n/a | \$388 |

Notes for DELAYED costs

Estimated cost to implement measures and/or procedures designed to minimize odors from causing nuisance odor conditions. The Date Required is the date the nuisance odor conditions were detected and the Final Date is the estimated date of compliance.

## Avoided Costs

### ANNUALIZE 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           |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs        |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed)             |  |  |  | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$388

The TCEQ is committed to accessibility.

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



# Compliance History Report

Compliance History Report for CN600276901, RN110494770, Rating Year 2018 which includes Compliance History (CH) components from September 1, 2013, through August 31, 2018.

**Customer, Respondent, or Owner/Operator:** CN600276901, BNSF Railway Company **Classification:** SATISFACTORY **Rating:** 0.49

**Regulated Entity:** RN110494770, FORT WORTH WESTERN RAILWAY APPROX. 732 FT SE OF INTX OF FLOYD ST AND POWELL CEMETERY RD **Classification:** NOT APPLICABLE **Rating:** N/A

**Complexity Points:** N/A **Repeat Violator:** N/A

**CH Group:** 14 - Other

**Location:** APPROX. 732 FT SE OF INTX OF FLOYD ST AND POWELL CEMETERY RD, TOLAR, HOOD COUNTY, TX

**TCEQ Region:** REGION 04 - DFW METROPLEX

**ID Number(s):**  
**AIR QUALITY NON PERMITTED ID NUMBER**  
 R04110494770

**Compliance History Period:** September 01, 2013 to August 31, 2018 **Rating Year:** 2018 **Rating Date:** 09/01/2018

**Date Compliance History Report Prepared:** November 08, 2018

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** November 08, 2013 to November 08, 2018

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**  
**Name:** Raime Hayes-Falero **Phone:** (713) 767-3567

## Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

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

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

**B. Criminal convictions:**  
 N/A

**C. Chronic excessive emissions events:**  
 N/A

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

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

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

N/A

**F. Environmental audits:**  
 N/A

**G. Type of environmental management systems (EMSs):**  
 N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A





# Compliance History Report

Compliance History Report for CN605477777, RN110494770, Rating Year 2018 which includes Compliance History (CH) components from September 1, 2013, through August 31, 2018.

**Customer, Respondent, or Owner/Operator:** CN605477777, Fort Worth & Western Railroad Company **Classification:** UNCLASSIFIED **Rating:** -----

**Regulated Entity:** RN110494770, FORT WORTH WESTERN RAILWAY APPROX. 732 FT SE OF INTX OF FLOYD ST AND POWELL CEMETERY RD **Classification:** NOT APPLICABLE **Rating:** N/A

**Complexity Points:** N/A **Repeat Violator:** N/A

**CH Group:** 14 - Other

**Location:** APPROX. 732 FT SE OF INTX OF FLOYD ST AND POWELL CEMETERY RD, TOLAR, HOOD COUNTY, TX

**TCEQ Region:** REGION 04 - DFW METROPLEX

**ID Number(s):**  
**AIR QUALITY NON PERMITTED ID NUMBER**  
 R04110494770

**Compliance History Period:** September 01, 2013 to August 31, 2018 **Rating Year:** 2018 **Rating Date:** 09/01/2018

**Date Compliance History Report Prepared:** November 15, 2018

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** November 09, 2013 to November 09, 2018

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**  
**Name:** Raime Hayes-Falero **Phone:** (713) 239-3567

## Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

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

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

**B. Criminal convictions:**  
 N/A

**C. Chronic excessive emissions events:**  
 N/A

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

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

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

N/A

**F. Environmental audits:**  
 N/A

**G. Type of environmental management systems (EMSs):**  
 N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BNSF RAILWAY COMPANY AND  
FORT WORTH & WESTERN  
RAILROAD COMPANY;  
RN110494770**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2018-1589-AIR-E**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding BNSF Railway Company ("BNSF") and Fort Worth & Western Railroad Company ("FWWR") (collectively, "Respondents") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondents, represented by Laura L. LaValle of the law firm Beveridge & Diamond, P.C., presented this Order to the Commission.

Respondents understand that they have certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, to request an evidentiary hearing, receive notice of an evidentiary hearing, and a right to appeal. By entering into this Order, Respondents agree to waive all notice and procedural rights which might otherwise be authorized or required in this action.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon Respondents.

The Commission makes the following Findings of Fact and Conclusions of Law:

## **FINDINGS OF FACT**

1. BNSF owns and FWWR operates railway diesel engines located on a railway spur approximately 732 feet southeast of the intersection of Floyd Street and Powell Cemetery Road in Tolar, Hood County, Texas (the "Site"). The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on August 28, 2018, an investigator documented that Respondents failed to prevent nuisance odor conditions. Specifically, on August 28, 2018, TCEQ staff conducted an odor survey at an off-site location; detected light to moderate offensive diesel odors from the idling railway diesel engines; and experienced a headache, irritated lungs,

chemical taste in their mouth, and burning/watery eyes, resulting in the confirmation of a nuisance odor condition.

3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by Respondents of a violation of a statute or rule within the TCEQ's jurisdiction. Respondents are entering into this Order to efficiently resolve this enforcement action notwithstanding any rights or defenses Respondents may have under the law.
4. The Executive Director recognizes that FWWR implemented measures on August 29, 2018, designed to minimize the placement of idling railway diesel engines at the Site to minimize nuisance odor conditions.

### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, Respondents failed to prevent nuisance odor conditions, in violation of TEX. HEALTH & SAFETY CODE § 382.085(a) and (b) and 30 TEX. ADMIN. CODE § 101.4.
3. Pursuant to TEX. WATER CODE § 7.051, TCEQ has the authority to assess an administrative penalty against Respondents for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of three thousand seven hundred fifty dollars (\$3,750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondents paid three thousand seven hundred fifty dollars (\$3,750.00) of the penalty.

### **ORDERING PROVISIONS**

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

1. Respondents are assessed an administrative penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondents' compliance with all requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
2. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.

4. This Order, issued by the Commission, shall not be admissible against Respondents in a civil proceeding, unless the proceeding is brought by the Office of the Attorney General of the State of Texas ("OAG") to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by TCEQ under such a statute. The Executive Director may, without further notice or hearing, refer this matter to the OAG for further enforcement proceedings if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
5. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
6. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
7. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

**SIGNATURE PAGE (1 of 2)**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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



\_\_\_\_\_  
Date

4-14-2020

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

\_\_\_\_\_  
Date

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

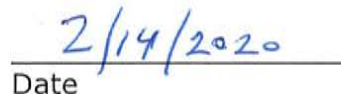
I also understand that failure to comply with the Ordering Provisions in this Order and/or failure to timely pay the penalty amount may result in:

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

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



\_\_\_\_\_  
Signature - Brooke L. Gaede  
Senior General Attorney I  
BNSF Railway Company  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131

  
\_\_\_\_\_  
Date

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

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**SIGNATURE PAGE (2 of 2)**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

For the Commission



Date

4-14-2020

For the Executive Director

Date

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

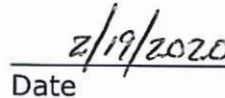
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- Automatic referral to the Attorney General's office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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



Signature - Kevin Erasmus  
President and CEO  
Fort Worth & Western Railroad Company  
6300 Ridglea Place, Suite 1200  
Fort Worth, Texas 76116

  
Date

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

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