

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
NOLTEX L.L.C.;  
RN101049518**

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§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2015-0097-AIR-E**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Noltex L.L.C. ("Respondent") 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 Respondent, represented by Paulina Williams of the law firm Baker Botts LLP, presented this Order to the Commission.

Respondent understands that it has 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, Respondent agrees 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 Respondent.

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a chemical manufacturing plant located at 12220 Strang Road in La Porte, Harris County, Texas (the "Plant"). The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on August 1, 2014, an investigator documented that Respondent failed to prevent unauthorized emissions. Specifically, Respondent released 195,970 pounds of ethylene from the Exhaust Vent during an emissions event (Incident No. 200892) that began on June 25, 2014 and lasted 333 hours and 24 minutes. This event was determined to be an excessive emissions event.
3. The Executive Director recognizes that Respondent received approval of and implemented a corrective action plan as of March 20, 2015.

### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is 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, Respondent failed to prevent unauthorized emissions, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F), 116.115(c), and 122.143(4), Federal Operating Permit No. O1301, Special Terms and Conditions No. 11, and New Source Review Permit No. 19074, Special Conditions No. 1. Since these emissions were determined to be excessive, Respondent is prevented from asserting any affirmative defense under 30 TEX. ADMIN. CODE § 101.222.
3. Pursuant to TEX. WATER CODE § 7.051, TCEQ has the authority to assess an administrative penalty against Respondent 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 one hundred two thousand dollars (\$102,000.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid fifty-one thousand dollars (\$51,000.00) of the penalty. Pursuant to TEX. WATER CODE § 7.067, fifty-one thousand dollars (\$51,000.00) of the penalty shall be conditionally offset by Respondent's timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the SEP Agreement ("Attachment A" - incorporated herein by reference). Respondent's obligation to pay the conditionally offset portion of the penalty shall be discharged upon full compliance with all the terms and conditions of this Order, which includes any payment schedule and the timely and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director.

#### **ORDERING PROVISIONS**

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

1. Respondent is 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 Respondent's 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. Respondent shall implement and complete a SEP as set forth in Conclusion of Law No. 4. The amount of fifty-one thousand dollars (\$51,000.00) of the assessed administrative penalty is conditionally offset based on Respondent's implementation and completion a SEP pursuant to the terms and conditions contained in the SEP Agreement, as defined in Attachment A. Penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment.
3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Plant operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive

Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.

6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the 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 Respondent has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. 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.
10. 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.
11. 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**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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

\_\_\_\_\_  
Date

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


March 25, 2016  
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.

 *Director-operations*  
\_\_\_\_\_  
Signature - Bryan Kinkopf, Operations Director  
Noltex L.L.C.  
12220 Strang Road  
La Porte, Texas 77571

2-11-16  
Date

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

\_\_\_\_\_

**Attachment A**  
**Docket Number: 2015-0097-AIR-E**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	Noltex, L.L.C.
<b>Penalty Amount:</b>	One Hundred Two Thousand Dollars (\$102,000)
<b>SEP Offset Amount:</b>	Fifty-One Thousand Dollars (\$51,000)
<b>Type of SEP:</b>	Contribution to a Third-Party Administrator SEP
<b>Third-Party Administrator:</b>	Houston-Galveston Area Council-AERCO
<b>Project Name:</b>	<i>Clean Vehicles Partnership Project</i>
<b>Location of SEP:</b>	Angelina, Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Wharton Counties

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

**1. Project Description**

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Houston-Galveston Area Council-AERCO** for the *Clean Vehicles Partnership Project*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Administrator and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to replace old, higher emission buses that do not meet 2010 Environmental Protection Agency ("EPA") emissions standards ("Old Buses") with new, lower emission buses that meet the most recent EPA emissions standards ("New Buses") or to retrofit or convert Old Buses with emissions reducing equipment. The Third-Party Administrator shall allocate the SEP Offset Amount to public entities such as school districts, local governments, and public transit authorities ("SEP Recipients") that apply for replacement, retrofit, or conversion of buses.

The SEP Offset Amount may also be used for retrofit or conversion technology that brings an Old Bus up to current EPA emissions standards. New Buses may be alternative-fueled. The SEP Offset Amount may be used for up to 100% of the replacement, conversion, or retrofit cost. The SEP Offset Amount will be used only for purchase of New Buses or conversion or retrofit equipment and contract labor for installation of equipment. The SEP Offset Amount will not be used for financing such a purchase through a lease-purchase or similar agreement.

Retrofitting means reducing exhaust emissions to current standards by installing devices that are verified or certified by the EPA or the California Air Resources Board as proven retrofit

technologies. Converting means replacing an engine system with an alternative fuel engine system to bring the Old Bus within the current EPA emissions standards.

Buses to be replaced, retrofitted, or converted must be in regular use (driven at least five hundred miles per year for at least the past two years) by the SEP Recipient and must not already be scheduled for replacement in the following twenty-four months.

All replaced buses must be fully decommissioned. The Third-Party Administrator shall provide proof of decommissioning to TCEQ for each replaced vehicle by submitting a copy of the TCEQ SEP Vehicle Replacement Disposition Form. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

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

Respondent's signature affixed to this Agreed Order certifies that Respondent has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. Respondent shall not profit in any manner from this SEP.

#### B. Environmental Benefit

This SEP will directly benefit air quality by reducing harmful exhaust emissions that contribute to the formation of ozone and may cause or exacerbate a number of respiratory diseases, including asthma. For example, by replacing a 1989 diesel bus with a 2010 ultra-low emission model, passengers' exposure to Nitrogen Oxides may be reduced by 98 percent; Volatile Organic Compounds by 93 percent; Carbon Dioxide by 83 percent; and Particulate Matter by 99 percent. In addition, by encouraging less bus idling, this SEP contributes to public awareness of air pollution and air quality.

#### C. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

### 2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. Respondent shall make the check payable to **Houston-Galveston Area Council-AERCO SEP** and shall mail the contribution with a copy of the Agreed Order to:

Houston-Galveston Area Council-AERCO  
P.O. Box 22777  
Houston, TX 77227-2777

### 3. Records and Reporting

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

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

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

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

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP; shall make the check payable to "Texas Commission on Environmental Quality;" and shall mail it to:

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

#### **5. Publicity**

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

#### **6. Recognition**

Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

#### **7. Other SEPs by TCEQ or Other Agencies**

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