EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NUMBER: 2006-0791-DCL-E TCEQ ID NO: RN104247598 ENF ID: 29889

RESPONDENT NAME: KENNETH HART DBA 1.99 DRY CLEANERS

ORDER TYPE:

__1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	X FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	__AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	__PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	__WATER QUALITY	X DRY CLEANER REGISTRATION	

SITE WHERE VIOLATION(S) OCCURRED: 4720 West Sublett Road, Suite 100, Arlington, Tarrant County

TYPE OF OPERATION: Dry cleaning facility

SMALL BUSINESS: X Yes ___ No

OTHER SIGNIFICANT MATTERS: There are no previous complaints. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on January 29, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, Enforcement Division, Section II, MC R-4, (817) 588-5890
TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903
Respondent: Mr. Kenneth Hart, Owner, dba 1.99 Dry Cleaners, 4720 West Sublett Road, Suite 100, Arlington, Texas 76017
Respondent's Attorney: Not represented by counsel.

RESPONDENT'S NAME: KENNETH HART DBA 1.99 DRY CLEANERS
DOCKET NO.: 2006-0791-DCL-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date(s) of Investigation(s) Relating to this Case:** May 25, 2006 **Date(s) of NOV(s)/NOE(s) Relating to this Case:** June 20, 2006 (NOE) **Background Facts:** An EDPRP was filed on September 25, 2006. The Respondent received the EDPRP on October 2, 2006, as evidenced by the signature on the green card. No Answer has been filed to the EDPRP and attempts to contact the Respondent by phone have been unsuccessful. The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report. **DCL:** Failed to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility [30 TEX. ADMIN. CODE § 337.11(e) and TEX. HEALTH & SAFETY CODE § 374.102].	**Total Assessed:** $1,185 **Total Deferred:** $0 __Expedited Settlement __Financial Inability to Pay **Total Due to General Revenue:** $1,185 This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required do so under the terms of this proposed Order. **Site Compliance History Classification:** N/A **Person Compliance History Classification:** N/A **Major Source:** ___Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent submitted a current registration for the Facility on June 26, 2006.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision May 19, 2005*

DATES					
Assigned	19-Jun-2006				
PCW	26-Feb-2007	Screening	20-Jun-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	Kenneth Hart dba 1.99 Dry Cleaners		
Reg. Ent. Ref. No.	RN104247598		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	29889	No. of Violations	1
Docket No.	2006-0791-DCL-E	Order Type	1660
Media Program(s)	Drycleaner	Enf. Coordinator	Jorge Ibarra, P.E.
Multi-Media		EC's Team	Enforcement Team 4
Admin. Penalty $ Limit Minimum	$0	Maximum	$50

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $1,185

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0% Enhancement *Subtotals 2, 3, & 7* $0

Notes: The respondent does not have any other enforcement actions within the last five years.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply 10% Reduction *Subtotal 5* -$119

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

Notes: The respondent came into compliance on June 27, 2006, after the Notice of Enforcement was issued.

Economic Benefit 0% Enhancement* *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$10
Approx. Cost of Compliance	$250

SUM OF SUBTOTALS 1-7 Final Subtotal $1,067

OTHER FACTORS AS JUSTICE MAY REQUIRE 11% Enhancement Adjustment $119

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes: Because this is a Default Order, the Executive Director recommends an upward adjustment to offset the reduction for good faith effort to comply.

Final Penalty Amount $1,185

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $1,185

DEFERRAL Reduction Adjustment $0

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

Notes: No deferral is recommended because the respondent did not settle in a timely manner.

PAYABLE PENALTY $1,185

Screening Date	20-Jun-2006	**Docket No.** 2006-0791-DCL-E	**PCW**
Respondent	Kenneth Hart dba 1.99 Dry Cleaners		*Policy Revision 2 (September 2002)*
Case ID No.	29889		*PCW Revision May 19, 2005*
Reg. Ent. Reference No.	RN104247598		
Media [Statute]	Drycleaner		
Enf. Coordinator	Jorge Ibarra, P.E.		

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)*	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability *(number of orders meeting criteria)*	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 *(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*	0	0%
	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) **0%**

>> Repeat Violator (Subtotal 3)

N/A

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

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

N/A

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

>> Compliance History Summary

Compliance History Notes: The respondent does not have any other enforcement actions within the last five years.

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

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	20-Jun-2006
Docket No.	2006-0791-DCL-E
Respondent	Kenneth Hart dba 1.99 Dry Cleaners
Case ID No.	29889
Reg. Ent. Reference No.	RN104247598
Media [Statute]	Drycleaner
Enf. Coordinator	Jorge Ibarra, P.E.
Violation Number	1
Primary Rule Cite(s)	30 Tex. Admin. Code § 337.11(e)
Secondary Rule Cite(s)	Tex. Health and Safety Code § 374.102
Violation Description	The respondent failed to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility.

Base Penalty $50

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment -$45

Base Penalty Subtotal $5

Violation Events

Number of Violation Events: 237

mark only one use a small x

daily	x
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $1,185

Two hundred thirty-seven daily events are recommended from the September 1, 2005 deadline to the April 26, 2006 deadline established by the TCEQ letter dated March 24, 2006.

Economic Benefit (EB) for this violation

Estimated EB Amount $10

Statutory Limit Test

Violation Final Penalty Total $1,185

This violation Final Assessed Penalty (adjusted for limits) $1,185

Economic Benefit Worksheet

Respondent	Kenneth Hart dba 1.99 Dry Cleaners
Case ID No.	29889
Reg. Ent. Reference No.	RN104247598
Media [Statute]	Drycleaner
Violation No.	1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs	$250	01-Sep-2005	27-Jun-2006	0.8	$10	n/a	$10
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: The estimated cost to register a dry cleaning or drop station facility annually. The date required is the date that the completed registration form was due and the final date is the date the respondent achieved compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance: $250

TOTAL: $10

Compliance History

Customer/Respondent/Owner-Operator:	CN602613762	HART, KENNETH	Classification: N/A	Rating:
Regulated Entity:	RN104247598	1.99 DRY CLEANERS	Classification: N/A	Site Rating:
ID Number(s):				
Location:	4720 W SUBLETT RD STE 100, ARLINGTON, TX, 76017			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	June 20, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 20, 2001 to June 20, 2006			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	Yes
2. Has there been a (known) change in ownership of the site during the compliance period?	No
3. If Yes, who is the current owner?	N/A
4. if Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership occur?	N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

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

1 06/15/2006 (482783)

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

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 KENNETH HART DBA 1.99 DRY CLEANERS RN104247598	§ § § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER
DOCKET NO. 2006-0791-DCL-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE § 7.054, TEX. HEALTH & SAFETY CODE ch. 374 and 30 TEX. ADMIN. CODE chs. 70 and 337 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty of the respondent. The respondent made the subject of this Order is Kenneth Hart dba 1.99 Dry Cleaners ("Mr. Hart").

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

FINDINGS OF FACT

1. Mr. Hart owns and operates a dry cleaning facility located at 4720 West Sublett Road, Suite 100 in Arlington, Tarrant County, Texas (the "Facility").

2. The Facility is a retail commercial establishment that operates or has operated, in whole or in part for the purpose of cleaning garments or other fabrics using a process that involves any use of dry cleaning solvents. As such, the Facility is a dry cleaning facility as defined in TEX. HEALTH & SAFETY CODE § 374.001(7).

3. During an inspection conducted on May 25, 2006, TCEQ staff documented that Mr. Hart violated 30 TEX. ADMIN. CODE § 337.11(e) and TEX. HEALTH & SAFETY CODE § 374.102 by failing renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility.

4. Mr. Hart received notice of the violations on or about June 20, 2006.

5. The Executive Director filed 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 Kenneth Hart dba 1.99 Dry Cleaners" (the "EDPRP") in the TCEQ Chief Clerk's office on September 25, 2006.

6. By letter dated September 25, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Hart with notice of the EDPRP. According to the return receipt "green card," Mr. Hart received notice of the EDPRP on October 2, 2006, as evidenced by the signature on the card.

7. More than 20 days have elapsed since Mr. Hart received notice of the EDPRP, provided by the Executive Director. Mr. Hart failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Hart is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, HEALTH & SAFETY CODE ch. 374, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3, Mr. Hart failed to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility, in violation of 30 TEX. ADMIN. CODE § 337.11(e) and TEX. HEALTH & SAFETY CODE § 374.102, as documented during an investigation conducted on May 25, 2006.

3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Hart with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

4. As evidenced by Finding of Fact No. 7, Mr. Hart has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Hart and assess the penalty recommended by the Executive Director.

5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Hart for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of one thousand one hundred eighty-five dollars ($1,185.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE §§ 7.053 and 7.0525.

7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Hart is assessed an administrative penalty in the amount of one thousand one hundred eighty-five dollars ($1,185.00) for violations of TEX. HEALTH & SAFETY CODE § 374.102, TEX. ADMIN. CODE § 337.11(e) and rules of the TCEQ. The payment of this administrative penalty and Mr. Hart's compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Kenneth Hart dba 1.99 Dry Cleaners; Docket No. 2006-0791-DCL-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. All relief not expressly granted in this Order is denied.

3. The provisions of this Order shall apply to and be binding upon Mr. Hart. Mr. Hart is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility's operations referenced in this Order.

4. If Mr. Hart 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, Mr. Hart's failure to comply is not a violation of this Order. Mr. Hart shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Hart shall notify the Executive Director within seven days after Mr. Hart 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 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 Mr. Hart shall be made in writing to the Executive Director. Extensions are not effective until Mr. Hart receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Hart if the Executive Director determines that Mr. Hart has not complied with one or more of the terms or conditions in this Order.

7. 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.

8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

For the Commission

AFFIDAVIT OF RACHAEL R. GAINES

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Rachael R. Gaines. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed 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 Kenneth Hart dba 1.99 Dry Cleaners" (the "EDPRP") with the Office of the Chief Clerk on September 25, 2006.

I sent the EDPRP to Mr. Hart at its last known address on September 25, 2006 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Hart received notice of the EDPRP on October 2, 2006, as evidenced by the signature on the card.

More than 20 days have elapsed since Mr. Hart received notice of the EDPRP. Mr. Hart failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."

Rachael Gaines

Rachael R. Gaines
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rachael R. Gaines, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 30 day of November A.D., 2006.

Margaret Jackson

Notary Signature

Margaret Jackson
Notary Public
State of Texas
My Commission Expires
OCTOBER 06, 2009