

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-0808-MSW-E **TCEQ ID:** RN104859376 **CASE NO.:** 33552
RESPONDENT NAME: K&M Broussard Co.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Auto Care Beaumont, 4075 Eastex Freeway, Beaumont, Jefferson County</p> <p>TYPE OF OPERATION: General automotive maintenance facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on February 13, 2006, alleging that the soil was contaminated with spilt used oil. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received but the complainant has not expressed the desire to protest this action or speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 15, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Clinton Sims, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-6933; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Kelly Broussard, President, K&M Broussard Co., 4075 Eastex Freeway, Beaumont, Texas 77706 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: February 13, 2006</p> <p>Date of Investigation Relating to this Case: February 23, 2007</p> <p>Date of NOE Relating to this Case: May 8, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation. One significant program violation was observed.</p> <p>WASTE</p> <p>Failure to report and respond to releases of used oil. Specifically, contaminated soil was observed next to the used oil tank and trash container [30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS § 279.22(d)].</p>	<p>Total Assessed: \$262</p> <p>Total Deferred: \$52 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$210</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Immediately upon the effective date of this Agreed Order, cease allowing used oil to leak onto the ground;</p> <p>b) Within 30 days after the effective date of this Agreed Order, remove and properly dispose of the contaminated soil from the ground near the used oil tank and trash container;</p> <p>c) Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.</p>

Additional ID No(s): None



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

DATES	Assigned	14-May-2007	Screening	23-May-2007	EPA Due	
	PCW	7-Jun-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	K&M Broussard Co.		
Reg. Ent. Ref. No.	RN104859376		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33552	No. of Violations	1
Docket No.	2007-0808-MSW-E	Order Type	1660
Media Program(s)	Used Oil	Enf. Coordinator	Alison Echlin
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$250
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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	5% Enhancement	Subtotals 2, 3, & 7	\$12
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Notes: The Respondent has received one NOV with same or similar violations at this site within the past five years.

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

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

Total EB Amounts	\$24	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$500	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$262
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount	\$262
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$262
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DEFERRAL	20% Reduction	Adjustment	-\$52
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$210
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Screening Date 23-May-2007

Docket No. 2007-0808-MSW-E

PCW

Respondent K&M Broussard Co.

Policy Revision 2 (September 2002)

Case ID No. 33552

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN104859376

Media [Statute] Used Oil

Enf. Coordinator Alison Echlin

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	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 submitted)	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%
<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) 5%

>> 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 has received one NOV with same or similar violations at this site within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 23-May-2007

Docket No. 2007-0808-MSW-E

PCW

Respondent K&M Broussard Co.

Policy Revision 2 (September 2002)

Case ID No. 33552

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN104859376

Media [Statute] Used Oil

Enf. Coordinator Alison Echlin

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 324.6 and 40 Code of Federal Regulations § 279.22(d)

Violation Description

Failed to report and respond to releases of used oil, as documented during an investigation conducted on February 23, 2007. Specifically, contaminated soil was observed next to the used oil tank and trash container.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1

89 Number of violation days

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

Violation Base Penalty \$250

One quarterly event is recommended from the February 23, 2007 investigation date to the May 23, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$24

Violation Final Penalty Total \$262

This violation Final Assessed Penalty (adjusted for limits) \$262

Economic Benefit Worksheet

Respondent **K&M Broussard Co.**
 Case ID No. **33552**
 Reg. Ent. Reference No. **RN104859376**
 Media Used **Oil**
 Violation No. **1**

Percent Interest	Years of Depreciation
5.0	15

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

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	\$500	23-Feb-2007	8-Feb-2008	1.0	\$24	n/a	\$24
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and properly dispose of oil observed at the site, from the investigation date to the estimated date of 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

\$500

TOTAL

\$24

Compliance History

Customer/Respondent/Owner-Operator:	CN602973208	K & M Broussard Co.	Classification:	Rating:
Regulated Entity:	RN104859376	AUTO CARE BEAUMONT	Classification:	Site Rating:
ID Number(s):				
Location:	4075 EASTEX FWY, BEAUMONT, TX, 77706			
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	May 22, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 22, 2002 to May 22, 2007			

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

Name: Alison Echlin Phone: 512-239-3308

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 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 05/08/2007 (542406)
 - N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 04/24/2006 (455231)
 - Self Report? NO Classification: Minor
 - Citation: 30 TAC Chapter 324, SubChapter A 324.6
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)(1)
 - Description: Failure to properly label used oil tank.
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 324, SubChapter A 324.6
30 TAC Chapter 327 327.4(b)(2)[G]
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(d)[G]
 - Description: Failure to respond to releases of used oil.
- 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
K&M BROUSSARD CO.
RN104859376

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2007-0808-MSW-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 K&M Broussard Co. ("K&M") under the authority of TEX. HEALTH & SAFETY CODE ch. 371 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and K&M appear before the Commission and together stipulate that:

1. K&M owns and operates a general automotive maintenance facility at 4075 Eastex Freeway in Beaumont, Jefferson County, Texas (the "Facility").
2. The Facility involves or involved the management of used oil as defined in TEX. HEALTH & SAFETY CODE ch. 371.
3. The Commission and K&M agree that the Commission has jurisdiction to enter this Agreed Order, and that K&M is subject to the Commission's jurisdiction.
4. K&M received notice of the violations alleged in Section II ("Allegations") on or about May 13, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by K&M of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Hundred Sixty-Two Dollars (\$262) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). K&M has paid Two Hundred Ten Dollars (\$210) of the administrative penalty and Fifty-Two Dollars (\$52) is deferred contingent upon K&M'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 K&M fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require K&M 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 K&M have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
 9. 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 K&M has not complied with one or more of the terms or conditions in this Agreed Order.
 10. 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.
 11. 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 Facility, K&M is alleged to have failed to report and respond to releases of used oil, in violation of 30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS § 279.22(d), as documented during an investigation conducted on February 23, 2007. Specifically, contaminated soil was observed next to the used oil tank and trash container.

III. DENIALS

K&M generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that K&M pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and K&M'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: K&M Broussard Co., Docket No. 2007-0808-MSW-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 K&M shall undertake the following technical requirements:
- a. Immediately upon the effective date of this Agreed Order, cease allowing used oil to leak onto the ground;
 - b. Within 30 days after the effective date of this Agreed Order, remove and properly dispose of the contaminated soil from the ground near the used oil tank and trash container;
 - c. 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 Nos. 2.a. and 2.b.

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."

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:

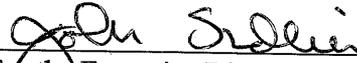
Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

3. The provisions of this Agreed Order shall apply to and be binding upon K&M. K&M is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If K&M 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, K&M's failure to comply is not a violation of this Agreed Order. K&M shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. K&M shall notify the Executive Director within seven days after K&M 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 K&M shall be made in writing to the Executive Director. Extensions are not effective until K&M 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 K&M 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 agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to K&M, or three days after the date on which the Commission mails notice of the Order to K&M, 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

10/9/07
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

August 8, 2007
Date

K&M Broussard Co

Name (Printed or typed)
Authorized Representative of
K&M Broussard Co.

President

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.

