

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-0076-AIR-E TCEQ ID: RN104373990 CASE NO.: 24950**  
**RESPONDENT NAME: KM AVIATION, INC.**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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 type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 5110 Voyager Drive, Dallas, Dallas County

**TYPE OF OPERATION:** aerospace surface coating facility

**SMALL BUSINESS:**  Yes  No  N/A

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

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired November 2, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Anna M. Treadwell, Litigation Division, MC 175, (512) 239-0974  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. James Nolan, Air Enforcement Section, MC 149, (512) 239-6634

**TCEQ Regional Contact:** Ms. Alyssa Taylor, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5828

**Respondent:** Mr. Kevin Miller, President, KM Aviation, Inc., 125 County Road 3224, Jacksonville, Texas 75766-7802

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 3, 2007</p> <p><b>Date of NOE Relating to this Case:</b> October 29, 2007</p> <p><b>Background Facts:</b> The EDRP was filed on January 23, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDRP on January 28, 2008. A default order was set on the August 20, 2008, agenda. On that same date the Respondent filed an answer. The matter was referred to SOAH and a preliminary hearing was scheduled for July 30, 2009. Notice of the preliminary hearing was mailed to the Respondent on July 1, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received the Notice of the Preliminary Hearing on July 3, 2009. On July 30, 2009, the Administrative Law Judge ("ALJ") convened the preliminary hearing, but the Respondent failed to appear. The Executive Director requested that the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered.</p> <p><b>Current Compliance Status:</b> No outstanding Technical Requirements.</p> <p><b>AIR:</b> Failed obtain authorization for an aircraft spray painting booth [TCEQ Agreed Order Docket No. 2005-0542-AIR-E; TEX. HEALTH &amp; SAFETY CODE §§ 382.085(b) and 382.0518(a); and 30 TEX. ADMIN. CODE § 116.110(a)].</p>	<p><b>Total Assessed:</b> \$30,000</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$30,000</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b> The Executive Director recognizes that the Respondent:</p> <ol style="list-style-type: none"> <li>1. Vacated its operations at the Plant and moved its operations to 5518 Airport Drive, Building 111, Denison, Grayson County, Texas on or about October 25, 2007; and</li> <li>2. Obtained a Permit by Rule ("PBR") No. 86083 for operations at the new location on September 19, 2008.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	28-Aug-2007	<b>Screening</b>	21-Sep-2007	<b>EPA Due</b>	
	<b>PCW</b>	21-Sep-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	KM Aviation, Inc.
<b>Reg. Ent. Ref. No.</b>	RN104372990
<b>Facility/Site Region</b>	4-Dallas/Fort Worth
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	24950	<b>No. of Violations</b>	1
<b>Docket No.</b>	2008-0076-AIR-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Air	<b>Enf. Coordinator</b>	Bryan Elliott
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$24,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** 25% Enhancement **Subtotals 2, 3, & 7** \$6,000

**Notes** The penalty was enhanced due to one NOV for similar violations and previous 1660-style order.

**Culpability** No 0% Enhancement **Subtotal 4** \$0

**Notes** The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 0% Reduction **Subtotal 5** \$0

Before NOV      NOV to EDP RP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

0% Enhancement\* **Subtotal 6** \$0

Total EB Amounts	\$148	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,500	

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$30,000

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount** \$30,000

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$30,000

**DEFERRAL** 0% Reduction **Adjustment** \$0

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

**Notes** No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** \$30,000

**Screening Date** 21-Sep-2007

**Docket No.** 2008-0076-AIR-E

**PCW**

**Respondent** KM Aviation, Inc.

Policy Revision 2 (September 2002)

**Case ID No.** 24950

PCW Revision September 19, 2007

**Reg. Ent. Reference No.** RN104372990

**Media [Statute]** Air

**Enf. Coordinator** Bryan Elliott

**Compliance History Worksheet**

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	1	5%
	Other written NOV's	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	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%

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)** 25%

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

No

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

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

Average Performer

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

>> **Compliance History Summary**

**Compliance History Notes**

The penalty was enhanced due to one NOV for similar violations and previous 1660-style order.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 25%

<b>Screening Date</b> 21-Sep-2007 <b>Respondent</b> KM Aviation, Inc. <b>Case ID No.</b> 24950 <b>Reg. Ent. Reference No.</b> RN104372990 <b>Media [Statute]</b> Air <b>Enf. Coordinator</b> Bryan Elliott <b>Violation Number</b> <input type="text" value="1"/> <b>Rule Cite(s)</b> 30 Tex. Admin. Code § 116.110(a), Tex. Health & Safety Code §§ 382.085(b) and 382.0518(a), and TCEQ Agreed Order Docket No. 2005-0542-AIR-E <b>Violation Description</b> Failed to comply with Ordering Provisions Nos. 2.a-2.d. of TCEQ Agreed Order Docket No. 2005-0542-AIR-E. Specifically, the Respondent failed to obtain authorization for an aircraft spray painting booth.	<b>Docket No.</b> 2008-0076-AIR-E <div style="text-align: right;"><b>PCW</b></div> <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision September 19, 2007</i>
<b>Base Penalty</b> <input type="text" value="\$10,000"/>	

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

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>		<b>Minor</b>
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="0%"/>	

>> **Programmatic Matrix**

	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b> <input type="text" value="10%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events        Number of violation days

	daily	<input type="text"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

*mark only one with an x*

**Violation Base Penalty**

Twenty-four monthly events are recommended from the effective date (November 6, 2005) of the order to the date the site was documented to be vacated (October 25, 2007).

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$148"/>	Violation Final Penalty Total <input type="text" value="\$30,000"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$30,000"/>	

## Economic Benefit Worksheet

**Respondent** KM Aviation, Inc.  
**Case ID No.** 24950  
**Reg. Ent. Reference No.** RN104372990  
**Media** Air  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

**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	\$1,500	6-Nov-2005	25-Oct-2007	2.0	\$148	n/a	\$148
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a permit application. The date required is the effective date of TCEQ Agreed Order Docket No. 2005-0542-AIR-E and the final date is the date the site was documented to have been vacated.

**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

\$1,500

**TOTAL**

\$148

# Compliance History

Customer/Respondent/Owner-Operator: CN802688806 KM Aviation, Inc. Classification: Average Rating: 29.67  
Regulated Entity: RN104372990 KM AVIATION Classification: Average Site Rating: 29.67  
ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 78318  
Location: 5110 VOYAGER DR, DALLAS, TX, 75237 Rating Date: 9/1/2007 Repeat Violator: NO  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: September 19, 2007  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 19, 2002 to September 19, 2007

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

Name: Bryan Elliott Phone: 239-6162

## 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.

Effective Date: 11/06/2005

ADMINORDER 2005-0542-AIR-E

Classification: Major

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)[G]  
5C THC Chapter 382, SubChapter A 382.0518(a)  
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failure to obtain authorization for the aircraft spray painting booth

- 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 03/03/2005 (351136)  
2 08/20/2007 (568144)

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

Date: 08/30/2004 (292552)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure of a facility to satisfy the requirements of a permit by rule or standard exemption.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure of a facility to satisfy the requirements of a permit by rule or standard exemption.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure of a facility to satisfy the requirements of a permit by rule or standard exemption.

- 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  
KM AVIATION, INC.;  
RN104372990**

§  
§  
§  
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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2008-0076-AIR-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 ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is KM Aviation, Inc. ("KM Aviation").

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

### **FINDINGS OF FACT**

1. At the time of the violation, KM Aviation owned and operated an aerospace surface coating plant located at 5110 Voyager Drive, Dallas, Dallas County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an investigation conducted on July 3, 2007, a TCEQ Dallas/Fort Worth Regional Office investigator documented that KM Aviation failed to comply with Ordering Provisions Nos. 2.a. through 2.d. of TCEQ Agreed Order Docket No. 2005-0542-AIR-E. Specifically, KM Aviation failed to obtain authorization for an aircraft spray painting booth.
4. KM Aviation received notice of the violation on or about November 3, 2007.
5. The Executive Director recognizes that KM Aviation implemented the following corrective measures at the facility:

- a. KM Aviation vacated its operations at the Plant and moved its operations to 5518 Airport Drive, Building 111, Denison, Grayson County, Texas on or about October 25, 2007.
  - b. KM Aviation obtained a Permit by Rule ("PBR") No. 86083 for operations at the new location on September 19, 2008.
6. 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 KM Aviation, Inc.," (the "EDPRP") in the TCEQ Chief Clerk's office on January 23, 2008.
  7. By letter dated January 23, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served KM Aviation with notice of the EDPRP. According to the return receipt "green card," KM Aviation received notice of the EDPRP on January 28, 2008, as evidenced by the signature on the card.
  8. KM Aviation filed an answer requesting a hearing on November 5, 2008, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings ("SOAH") on January 30, 2009.
  9. On July 1, 2009, the TCEQ Chief Clerk mailed the Notice of the July 30, 2009 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to KM Aviation. According to the return receipt "green card," KM Aviation received notice of the July 30, 2009 preliminary hearing on July 3, 2009, as evidenced by the signature on the card.
  10. On July 30, 2009, the Administrative Law Judge ("ALJ") convened the preliminary hearing, but KM Aviation failed to appear. The Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, KM Aviation is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3, KM Aviation failed to comply with Ordering Provisions Nos. 2.a. through 2.d. of TCEQ Agreed Order Docket No. 2005-0542-AIR-E. Specifically, KM Aviation failed to obtain authorization for an aircraft spray painting booth, in violation of TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.0518(a), 30 TEX. ADMIN. CODE § 116.110(a) and TCEQ Agreed Order Docket No. 2005-0542-AIR-E.
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served KM Aviation 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. 8, KM Aviation filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 30 TEX. ADMIN. CODE § 70.109.
5. As evidenced by Finding of Fact No. 9, KM Aviation was provided proper notice of the preliminary hearing pursuant to TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058 and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
6. As evidenced by Finding of Fact No. 10, KM Aviation failed to appear for the preliminary hearing. Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against KM Aviation and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against KM Aviation 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.
8. An administrative penalty in the amount of thirty thousand dollars (\$30,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. 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. KM Aviation is assessed an administrative penalty in the amount of thirty thousand dollars (\$30,000.00) for violations of the Texas Health & Safety Code and the rules of the TCEQ. The payment of this administrative penalty and KM Aviation'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: KM Aviation, Inc.; Docket No. 2008-0076-AIR-E" to:

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

2. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon KM Aviation. KM Aviation is ordered to give notice of this Order to personnel who maintain day-to-day control over the Plant operations referenced in this Order.
4. If KM Aviation 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, KM Aviation's failure to comply is not a violation of this Order. KM Aviation shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. KM Aviation shall notify the Executive Director within seven days after KM Aviation 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 KM Aviation shall be made in writing

to the Executive Director. Extensions are not effective until KM Aviation 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 KM Aviation if the Executive Director determines that KM Aviation 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

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For the Commission

**AFFIDAVIT OF ANNA M. TREADWELL**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Anna M. Treadwell. 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.

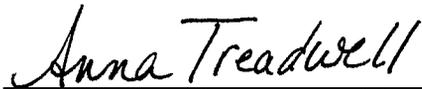
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against KM Aviation, Inc.,” (the “EDPRP”) was filed with the Office of the Chief Clerk on January 23, 2008.

The EDPRP was mailed to KM Aviation at its last known address on January 23, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” KM Aviation received notice of the EDPRP on January 28, 2008, as evidenced by the signature on the card.

KM Aviation filed an answer requesting a hearing on November 5, 2008, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on January 30, 2009.

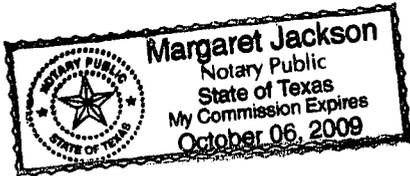
Notice of the July 30, 2009, preliminary hearing was mailed to KM Aviation by the TCEQ Chief Clerk on July 1, 2009. The Notice was sent to KM Aviation via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” KM Aviation received the Notice of the Preliminary Hearing on July 3, 2009.

KM Aviation failed to appear at the preliminary hearing on July 30, 2009. At that hearing, I requested and received a finding that KM Aviation was served with proper notice of the hearing. I also requested and received a remand from the Administrative Law Judge pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), which gives an ALJ the authority to remand the case back to the agency “to allow the agency to dispose of the case on a default basis under TEX. GOV’T CODE § 2001.056 and the referring agency’s rules.” Pursuant to TEX. GOV’T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against KM Aviation and assess the penalty recommended by the Executive Director.

  
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Anna M. Treadwell, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Anna M. Treadwell, 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 18 day of September, A.D., 2009.



*Margaret Jackson*  
Notary Signature