

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-2012-IHW-E RN105390819 CASE NO. 38849
RESPONDENT NAME: G. H. MCCONNELL DBA ALLIED RADIATOR SERVICE

ORDER TYPE:		
<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	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" 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 VIOLATIONS OCCURRED: 3440 East Illinois Avenue, Dallas, Dallas County

TYPE OF OPERATION: radiator repair business

SMALL BUSINESS: Yes No

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 Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired August 23, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Waste Enforcement Section, MC 128, (512) 239-5690

TCEQ Regional Contact: Mr. Sam Barrett, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5903

Respondent: Mr. G. H. McConnell, Allied Radiator Service, 3440 East Illinois Avenue, Dallas, Texas 75216

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: September 2, 2009</p> <p>Date of NOE Relating to this Case: November 23, 2009</p> <p>Background Facts: The EDPRP was filed on May 3, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>IHW:</p> <ol style="list-style-type: none"> Failed to prevent the unauthorized disposal of hazardous waste [30 TEX. ADMIN. CODE § 335.4]. Failed to conduct hazardous waste determinations on wastes generated at the Facility [30 TEX. ADMIN. CODE § 335.62 and 40 C.F.R. § 262.11]. 	<p>Total Assessed: \$14,375</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$14,375</p> <p>This is a Default Order. 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>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" 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>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately cease disposing of additional unauthorized hazardous waste at the Facility. Within 30 days, conduct hazardous waste determinations on all wastes generated at the Facility. Within 60 days, submit an Affected Property Assessment Report ("APAR") to the Executive Director for approval. If results of the APAR indicate response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program ("TRRP"). Within 75 days, submit written certification demonstrating compliance with Ordering Provisions Nos. 1 through 3.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	23-Nov-2009			
	PCW	26-Apr-2010	Screening	26-Nov-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	G. H. McConnell dba Allied Radiator Service				
Reg. Ent. Ref. No.	RN105390819				
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	38849	No. of Violations	2		
Docket No.	2009-2012-IHW-E	Order Type	1660		
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Thomas Greimel		
		EC's Team	Enforcement Team 7		
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$12,500
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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	15.0% Enhancement	Subtotals 2, 3, & 7	\$1,875
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Notes: Enhancement for three previous NOVs with same or similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$499
Approx. Cost of Compliance	\$11,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$14,375
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$14,375

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$14,375
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$14,375
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Screening Date 26-Nov-2009

Docket No. 2009-2012-IHW-E

PCW

Respondent G. H. McConnell dba Allied Radiator Service

Policy Revision 2 (September 2002)

Case ID No. 38849

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105390819

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

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 (<i>number of NOVs meeting criteria</i>)	3	15%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<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) 15%

>> **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

Enhancement for three previous NOVs with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 15%

Screening Date 26-Nov-2009 **Docket No.** 2009-2012-IHW-E **PCW**
Respondent G. H. McConnell dba Allied Radiator Service *Policy Revision 2 (September 2002)*
Case ID No. 38849 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105390819
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Thomas Greimel

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.4

Violation Description
 Failed to prevent the unauthorized disposal of hazardous waste. Specifically, hazardous waste disposal at the Facility was observed in areas next to containers filled with solid waste generated from Respondent's radiator cleaning and processing activities. Three physical samples were taken from areas of the Facility believed to be contaminated by the solid waste disposal and the samples were analyzed using the toxicity characteristic leaching procedure ("TCLP"). Laboratory reports show the test samples contained hazardous levels of lead (EPA Hazardous Waste No. D008) concentrations of 651 milligrams per liter (mg/l), 501 mg/l, and 544 mg/l, as well as hazardous levels of total silver (EPA Hazardous Waste No. D011) concentrations of 136 milligrams per kilogram (mg/kg) and 175 mg/kg.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual		x		
	Potential				25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes
 Human health or the environment has been exposed to significant amounts of pollutants.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3 86 Number of violation days

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

Violation Base Penalty \$7,500

Three monthly events are recommended from the September 2, 2009 investigation date to the November 26, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Extraordinary	Before NOV	NOV to EDPRP/Settlement
Ordinary		
N/A	x	(mark with x)

Notes
 The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$453

Violation Final Penalty Total \$8,625

This violation Final Assessed Penalty (adjusted for limits) \$8,625

Economic Benefit Worksheet

Respondent G. H. McConnell dba Allied Radiator Service
Case ID No. 38849
Reg. Ent. Reference No. RN105390819
Media Industrial and Hazardous Waste
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
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$10,000	2-Sep-2009	30-Jul-2010	0.91	\$453	n/a	\$453
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to assess and remediate contamination at the Facility. The Date Required is the investigation date. The Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$453

Screening Date 26-Nov-2009 **Docket No.** 2009-2012-IHW-E **PCW**
Respondent G. H. McConnell dba Allied Radiator Service *Policy Revision 2 (September 2002)*
Case ID No. 38849 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105390819
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Thomas Greimel

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 335.62 and 40 Code of Federal Regulations § 262.11
Violation Description Failed to conduct hazardous waste determinations on wastes generated at the Facility. Specifically, no hazardous waste determinations or waste classification data was available for waste in drums and containers and for liquid wastes generated at the Facility.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential	x				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500
 \$2,500

Violation Events

Number of Violation Events 2 86 Number of violation days
 mark only one with an x
 daily
 weekly
 monthly
 quarterly
 semiannual
 annual
 single event x
Violation Base Penalty \$5,000

Two single events are recommended for two waste streams (process wastewater and radiator sludge waste) for which hazardous waste determinations were not conducted.

Good Faith Efforts to Comply 0.0% Reduction \$0

Before NOV NOV to EDRP/Settlement Offer
 Extraordinary
 Ordinary
 N/A x (mark with x)
Notes The Respondent does not meet the good faith criteria for this violation.
Violation Subtotal \$5,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$45 **Violation Final Penalty Total** \$5,750
This violation Final Assessed Penalty (adjusted for limits) \$5,750

Economic Benefit Worksheet

Respondent G. H. McConnell dba Allied Radiator Service
Case ID No. 38849
Reg. Ent. Reference No. RN105390819
Media Industrial and Hazardous Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	2-Sep-2009	30-Jul-2010	0.91	\$45	n/a	\$45

Notes for DELAYED costs

Estimated cost to conduct hazardous waste determinations on the process wastewater and radiator sludge waste streams generated during repair and cleaning of radiators. The Date Required is the investigation date. The Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$45

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603280884	MCCONNELL, G. H.	Classification: AVERAGE	Rating: 6.00
Regulated Entity:	RN105390819	ALLIED RADIATOR SERVICE	Classification: AVERAGE	Site Rating: 6.00
ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE	ID NUMBER		TXR000079954
	NONPERMITTED			
	INDUSTRIAL AND HAZARDOUS WASTE	ID NUMBER		F1996
	NONPERMITTED			
Location:	3440 E ILLINOIS AVE, DALLAS, TX, 75216			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	December 11, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 11, 2004 to December 11, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	<u>Thomas Greimel</u>		Phone:	<u>(512) 239-5690</u>

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, 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	03/12/2008	(637138)	
2	06/26/2008	(683735)	
3	11/20/2009	(782712)	
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 01/22/2008 (610762)**
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 335, SubChapter A 335.4
TWC Chapter 26 26.121
 - Description: Failure to prevent discharges of lead to surface soils at the site.
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 335, SubChapter C 335.62
40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11
 - Description: Failure to conduct a hazardous waste determination for wastes generated at the site and wastes stored on site.
 - Date: 03/04/2008 (637138)**
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 335, SubChapter A 335.4
TWC Chapter 26 26.121
 - Description: Failure to prevent discharges of lead to surface soils at the site.
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 335, SubChapter C 335.62
40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11
 - Description: Failure to conduct a hazardous waste determination for wastes generated at the site and wastes stored on site.
 - Date: 06/30/2008 (683735)**
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 335, SubChapter A 335.4
TWC Chapter 26 26.121
 - Description: Failure to prevent discharges of lead to surface soils at the site.
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 335, SubChapter C 335.62
40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11
 - Description: Failure to conduct a hazardous waste determination for wastes generated at the site and wastes stored on site.
- 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
G. H. MCCONNELL DBA ALLIED
RADIATOR SERVICE;
RN105390819**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-2012-IHW-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. 361, 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 G. H. McConnell dba Allied Radiator Service (“Respondent”).

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

FINDINGS OF FACT

1. Respondent owns and operates a radiator repair business at 3440 East Illinois Avenue, Dallas, Dallas County, Texas (the “Facility”).
2. The Facility involves the management and/or the disposal of industrial hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on September 2, 2009, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent:
 - a. Failed to prevent the unauthorized disposal of hazardous waste. Specifically, hazardous waste disposal at the Facility was observed in areas next to containers filled with solid waste generated from Respondent’s radiator cleaning and processing activities. Three physical samples were taken from areas of the Facility and analyzed using the toxicity characteristic leaching procedure (“TCLP”). Laboratory reports show the test samples contained hazardous levels of lead (EPA Hazardous Waste No. D008) concentrations of 651 milligrams per liter (“mg/l”), 501 mg/l, and 544 mg/l, respectively, and two of the test samples contained hazardous levels of total silver (EPA Hazardous Waste No. D011) concentrations of 136 milligrams per kilogram (“mg/kg”) and 175 mg/kg; and

- b. Failed to conduct hazardous waste determinations on wastes generated at the Facility. Specifically, no hazardous waste determinations or waste classification data was available for waste in drums and containers at the Facility, or for liquid wastes generated at the Facility.
4. Respondent received notice of the violations on or about November 28, 2009.
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 and Requiring Certain Actions of G. H. McConnell dba Allied Radiator Service” (the “EDPRP”) in the TCEQ Chief Clerk’s office on May 3, 2010.
6. By letter dated May 3, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent 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 Findings of Fact Nos. 1 and 2, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Respondent failed to prevent the unauthorized disposal of hazardous waste, in violation of 30 TEX. ADMIN. CODE § 335.4.
3. As evidenced by Finding of Fact No. 3.b., Respondent failed to conduct hazardous waste determinations on wastes generated at the Facility, in violation of 30 TEX. ADMIN. CODE § 335.62 and 40 C.F.R. § 262.11.
4. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer 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 Respondent and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent 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.
7. An administrative penalty in the amount of fourteen thousand three hundred seventy-five dollars (\$14,375.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. 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. Respondent is assessed an administrative penalty in the amount of fourteen thousand three hundred seventy-five dollars (\$14,375.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Respondent'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: G. H. McConnell dba Allied Radiator Service; Docket No. 2009-2012-IHW-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. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Respondent shall cease disposing of additional unauthorized hazardous waste at the Facility;
 - b. Within 30 days after the effective date of this Order, Respondent shall conduct hazardous waste determinations on all wastes generated at the Facility, in accordance with 30 TEX. ADMIN. CODE § 335.62; and

- c. Within 60 days after the effective date of this Order, Respondent shall submit an Affected Property Assessment Report ("APAR"), pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval.
- d. If the results of the APAR indicate that response actions are necessary, Respondent shall comply with all applicable requirements of the Texas Risk Reduction Program ("TRRP") pursuant to 30 TEX. ADMIN. CODE ch. 350, which may include but is not limited to: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(l)); and Institutional Controls under Subchapter F.
- e. Within 75 days after the effective date of this Order, Respondent shall 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. through 2.c. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines 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:

Samuel L. Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. All relief not expressly granted in this Order is denied.
4. The provisions of 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 Facility operations referenced in this Order.
5. 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.
6. 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.
7. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. 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 GARY K. SHIU

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

“My name is Gary K. Shiu. 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 and Requiring Certain Actions of G. H. McConnell dba Allied Radiator Service” (the “EDPRP”) was filed with the Office of the Chief Clerk on May 3, 2010.

The EDPRP was mailed to Respondent at his last known address on May 3, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

Gary K. Shiu, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this _____ day of _____, A.D., 2010.

Notary Signature