

Executive Summary – Enforcement Matter – Case No. 40451
CECIL L. MCKNIGHT AND MABLE MCKNIGHT
RN105765796
Docket No. 2010-1620-IHW-E

Order Type:
Default Order

Media:
IHW

Small Business:
N/A

Location(s) Where Violation(s) Occurred:
Five acre parcel west of the dead end of County Road 614, Dayton, Liberty County

Type of Operation:
former rubber manufacturing facility

Other Significant Matters:
Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: July 22, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$67,425

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$67,425

Compliance History Classifications:
Person/CN – Average (Both Respondents)
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

CECIL L. MCKNIGHT AND MABLE MCKNIGHT

RN105765796

Docket No. 2010-1620-IHW-E

Investigation Information

Complaint Date(s): March 24, 2010
Complaint Information: Complaint alleged that machine oil and hydraulic fluid were spilled on the ground and inside a building, noxious odors, and windblown yellow residue emanating from the facility.

Date(s) of Investigation: April 1, 2010

Date(s) of NOV(s): July 20, 2009

Date(s) of NOE(s): November 10, 2010

Violation Information

1. Failed to prevent the unauthorized disposal and discharge of industrial solid waste [TEX. WATER CODE § 26.121 and 30 TEX. ADMIN. CODE § 335.4].
2. Failed to conduct hazardous waste determinations and classifications [TEX. ADMIN. CODE § 335.62 and 40 C.F.R. § 262.11].
3. Failed to obtain authorization for industrial and hazardous waste storage and disposal [TEX. ADMIN. CODE § 335.2(a) and 40 C.F.R. § 262.34(b)].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

N/A

Technical Requirements:

1. Within 30 days, conduct hazardous waste determinations and classifications on all waste streams at the Facility.
2. Within 90 days, submit a cleanup and closure plan for all solid waste and solid waste management units at the Facility.
3. Within 195 days:
 - a. Complete cleanup and closure of the Facility; and
 - b. Submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: February 28, 2011

Date(s) Green Card(s) Signed: Unclaimed

Date(s) Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Contact Information

TCEQ Attorneys: Jennifer Cook, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ Enforcement Coordinator: Tom Greimel, Waste Enforcement Section, (512) 239-5690

TCEQ Regional Contact: Nicole Bealle, Houston Regional Office, (713) 767-3623

Respondents: Cecil and Mable McKnight, 310 Private Road 107, Devers, Texas 77538; and P.O. Box 367, Dayton, Texas 77535

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	13-Sep-2010	Screening	16-Sep-2010	EPA Due	
	PCW	7-Jul-2011				

RESPONDENT/FACILITY INFORMATION						
Respondent	Cecil L. McKnight and Mable McKnight					
Reg. Ent. Ref. No.	RN105765796					
Facility/Site Region	12-Houston	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	40451	No. of Violations	3			
Docket No.	2010-1620-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	\$43,500
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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	5.0% Enhancement	Subtotals 2, 3, & 7	\$2,175
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Notes	Enhancement for one previous NOV with same/similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	50.0% Enhancement*	Subtotal 6	\$21,750
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Total EB Amounts	\$22,404	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$62,800	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$67,425
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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	
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Final Penalty Amount	\$67,425
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$67,425
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$67,425
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Screening Date 16-Sep-2010 **Docket No.** 2010-1620-IHW-E
Respondent Cecil L. McKnight and Mable McKnight
Case ID No. 40451
Reg. Ent. Reference No. RN105765796
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Thomas Greimel

PCW

Policy Revision 2 (September 2002)
PCW Revision October 30, 2008

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	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%
	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) 5%

>> 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 one previous NOV with same/similar violations.

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

Screening Date 16-Sep-2010

Docket No. 2010-1620-IHW-E

PCW

Respondent Cecil L. McKnight and Mable McKnight

Policy Revision 2 (September 2002)

Case ID No. 40451

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105765796

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.4 and Tex. Water Code § 26.121

Violation Description Failed to prevent the unauthorized disposal and discharge of industrial solid waste. Specifically, numerous drums and containers of unknown chemicals and materials were observed on the property. Due to weather exposure and long-term storage the drums and containers were in various stages of deterioration and some had leaked their contents to the ground.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual		x		
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not 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 6 168 Number of violation days

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

Violation Base Penalty \$15,000

Six monthly events are recommended based on documentation of the violation during the April 1, 2010 investigation to the September 16, 2010 screening date.

Good Faith Efforts to Comply

	0.0%	Reduction
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

\$0

Notes

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

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$281

Violation Final Penalty Total \$23,250

This violation Final Assessed Penalty (adjusted for limits) \$23,250

Economic Benefit Worksheet

Respondent Cecil L. McKnight and Mable McKnight
Case ID No. 40451
Req. Ent. Reference No. RN105765796
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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	1-Apr-2010	16-May-2011	1.12	\$281	n/a	\$281

Notes for DELAYED costs

Estimated cost to remove and properly dispose of the waste and clean up the discharges. The date required is the date of the investigation and 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

\$5,000

TOTAL

\$281

Screening Date 16-Sep-2010

Docket No. 2010-1620-IHW-E

PCW

Respondent Cecil L. McKnight and Mable McKnight

Policy Revision 2 (September 2002)

Case ID No. 40451

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105765796

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 and classifications. Specifically, no hazardous waste determinations had been conducted on the contents of numerous drums and containers of chemicals and unknown materials that constitute at least nine different waste streams located in and around the building.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 9 Number of violation days 9

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$22,500

Nine single events are recommended (one per waste stream).

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

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

Violation Subtotal \$22,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,123

Violation Final Penalty Total \$34,875

This violation Final Assessed Penalty (adjusted for limits) \$34,875

Economic Benefit Worksheet

Respondent Cecil L. McKnight and Mable McKnight
Case ID No. 40451
Req. Ent. Reference No. RN105765796
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)	\$37,800	1-Apr-2010	16-May-2011	1.12	\$2,123	n/a	\$2,123

Notes for DELAYED costs

Estimated cost to perform a waste determination and classification for the wastes being stored at the Facility (9 wastestreams x \$4,200 each). The date required is the date of the investigation and 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

\$37,800

TOTAL

\$2,123

Screening Date 16-Sep-2010

Docket No. 2010-1620-IHW-E

PCW

Respondent Cecil L. McKnight and Mable McKnight

Policy Revision 2 (September 2002)

Case ID No. 40451

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105765796

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 335.2(a) and 40 Code of Federal Regulations § 262.34(b)

Violation Description Failed to obtain authorization for industrial and hazardous waste storage and disposal. Specifically, numerous drums and containers of abandoned chemicals and materials were being stored and disposed of on the property without authorization.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 6 168 Number of violation days

mark only one with an x	daily		Violation Base Penalty \$6,000
	weekly		
	monthly	x	
	quarterly		
	semiannual		
	annual		
	single event		

Six monthly events are recommended based on documentation of the violation during the April 1, 2010 investigation to the September 16, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

	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 for this violation.

Violation Subtotal \$6,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$20,000 Violation Final Penalty Total \$9,300

This violation Final Assessed Penalty (adjusted for limits) \$9,300

Economic Benefit Worksheet

Respondent Cecil L. McKnight and Mable McKnight
Case ID No. 40451
Req. Ent. Reference No. RN105765796
Media Industrial and Hazardous Waste
Violation No. 3

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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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]	\$20,000	31-Mar-2010	1-Apr-2010	0.00	\$0	\$20,000	\$20,000
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to obtain a permit to store hazardous waste. The date required is one day prior to the investigation and the final date is the date of the investigation.

Approx. Cost of Compliance

\$20,000

TOTAL

\$20,000

Compliance History Report

Customer/Respondent/Owner-Operator: CN603506791 McKnight, Cecil L. Classification: AVERAGE Rating: 9.00
 Regulated Entity: RN105765796 CAN-AM RUBBER Classification: AVERAGE Site Rating: 9.00
 ID Number(s): INDUSTRIAL AND HAZARDOUS WASTE ID NUMBER NONPERMITTED F2040
 Location: WEST ON DEAD END, COUNTY ROAD 614, DAYTON, TX
 TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: September 16, 2010
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: September 16, 2005 to September 16, 2010
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Tate Barrett Phone: (713) 422-8968

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: 9/1/2010 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.)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 Date: 07/20/2009 (762105)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 335, SubChapter A 335.4
 TWC Chapter 26 26.121
 Description: Unauthorized discharge
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 335, SubChapter C 335.62
 30 TAC Chapter 335, SubChapter R 335.504
 40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11
 Description: Hazardous waste determination.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 335, SubChapter A 335.2(a)
 Description: Permit required.
- 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

Compliance History

Customer/Respondent/Owner-Operator: CN603813502 Mable McKnight Classification: AVERAGE Rating: 9.00
 Regulated Entity: RN105765796 CAN-AM RUBBER Classification: AVERAGE Site Rating: 9.00
 ID Number(s): INDUSTRIAL AND HAZARDOUS WASTE ID NUMBER NONPERMITTED F2040
 Location: WEST ON DEAD END, COUNTY ROAD 614, DAYTON, TX
 TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: February 25, 2011
 Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 16, 2005 to September 16, 2010
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Tate Barrett Phone: (713) 422-8968

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: 9/1/2010 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.)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 07/20/2009 (762105)
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 335, SubChapter A 335.4
TWC Chapter 26 26.121
 - Description: Unauthorized discharge
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 335, SubChapter C 335.62
30 TAC Chapter 335, SubChapter R 335.504
40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11
 - Description: Hazardous waste determination.
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 335, SubChapter A 335.2(a)
 - Description: Permit required.
- 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
CECIL L. MCKNIGHT AND
MABLE MCKNIGHT;
RN105765796**

**§
§
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§
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§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-1620-IHW-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, 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 respondents. The respondents made the subject of this Order are Cecil L. McKnight and Mable McKnight ("Respondents").

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

FINDINGS OF FACT

1. Respondents own and operated a former rubber manufacturing facility located on a five-acre parcel west of the dead end of County Road 614 in Dayton, Liberty County, Texas (the "Facility"). The Facility involves the management and/or the disposal of industrial and hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on April 1, 2010, a TCEQ Houston Regional Office investigator documented that Respondents:
 - a. Failed to prevent the unauthorized disposal and discharge of industrial solid waste. Specifically, approximately forty-seven 55-gallon drums and other containers of unknown chemicals and materials were observed at the Facility. Due to weather exposure and long-term storage, the drums and containers were in various states of deterioration and some had leaked their contents to the ground;
 - b. Failed to conduct hazardous waste determinations and classifications. Specifically, no hazardous waste determinations had been conducted on the contents of 55-gallon drums and other containers of chemicals and unknown materials (approximately nine different waste streams) located in and around a building located at the Facility; and
 - c. Failed to obtain authorization for industrial and hazardous waste storage and disposal. Specifically, 55-gallon drums and containers of abandoned chemicals and materials were being stored and disposed of at the Facility

without authorization.

3. Respondent received notice of the violations on or about November 15, 2010.
4. 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 Cecil McKnight and Mable McKnight" (the "EDPRP") in the TCEQ Chief Clerk's office on February 28, 2011.
5. By letter dated February 28, 2011, sent to each Respondents' last known addresses via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served each Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRPs sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondents received notice of the EDPRP.
6. More than 20 days have elapsed since Respondents received notice of the EDPRP, provided by the Executive Director. Respondents failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondents failed to prevent the unauthorized disposal and discharge of industrial solid waste, in violation of TEX. WATER CODE § 26.121 and 30 TEX. ADMIN. CODE § 335.4.
3. As evidenced by Finding of Fact No. 2.b., Respondents failed to conduct hazardous waste determinations and classifications, in violation of 30 TEX. ADMIN. CODE § 335.62 and 40 C.F.R. § 262.11.
4. As evidenced by Finding of Fact No. 2.c., Respondents failed to obtain authorization for industrial and hazardous waste storage and disposal, in violation of 30 TEX. ADMIN. CODE § 335.2(a) and 40 C.F.R. § 262.34(b).
5. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served each Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
6. As evidenced by Finding of Fact No. 6, Respondents 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 Respondents 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 Respondents for violations of state statutes 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 sixty-seven thousand four hundred twenty-five dollars (\$67,425.00) 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. Respondents are assessed an administrative penalty in the amount of sixty-seven thousand four hundred twenty-five dollars (\$67,425.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' 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.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Cecil L. McKnight and Mable McKnight; Docket No. 2010-1620-IHW-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
3. Respondents shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Respondents shall conduct hazardous waste determinations and classifications on all waste streams at the Facility, in accordance with 30 TEX. ADMIN. CODE § 335.62;
 - b. Within 90 days after the effective date of this Order, Respondents shall submit a cleanup and closure plan for all solid waste and solid waste management units at the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 335.8, 335.112(a)(6) and 335.118 to:

Remediation Division, MC 127
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Respondents shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the cleanup and closure plan within 30 days after the date of such requests or by any other deadline specified by TCEQ in writing.
- d. Within 195 days after the effective date of this Order, Respondents shall:
 - i. Complete the cleanup and closure of the Facility pursuant to the closure plan referenced in Ordering Provision No. 3.b., above; and
 - ii. Submit written certification of compliance with Ordering Provisions Nos. 3.a. through 3.d.i. above, pursuant to Ordering Provision No. 3.e., below.
- e. The written certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certifications 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."

Respondents shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Nicole Bealle, Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1452
Texas Commission on Environmental Quality

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If Respondents fail 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, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. 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 Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JENNIFER COOK

STATE OF TEXAS

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COUNTY OF TRAVIS

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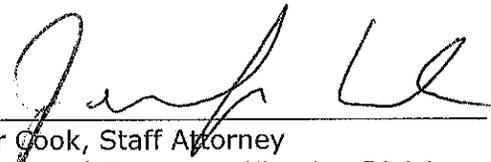
"My name is Jennifer Cook. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

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 Cecil McKnight and Mable McKnight" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 28, 2011.

The EDPRP was mailed to Respondent Cecil McKnight's last know addresses on February 28, 2011, 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 Cecil McKnight received notice of the EDPRP in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

The EDPRP was mailed to Respondent Mable McKnight's last know addresses on February 28, 2011, 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 Mable McKnight received notice of the EDPRP in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

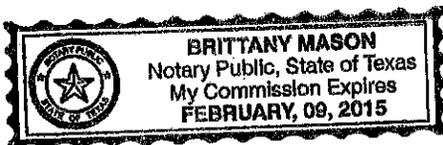
More than 20 days have elapsed since Respondents received notice of the EDPRP, provided by the Executive Director. Respondents failed to file an answer and failed to request a hearing.



Jennifer Cook, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jennifer Cook, 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 7 day of July, A.D. 2011.



Notary without Bond



Notary Signature