

Executive Summary – Enforcement Matter – Case No. 39521
ANTONIO REYES D/B/A IVYS TRUCKING
RN105823033
Docket No. 2010-0606-MLM-E

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
MLM - Used Oil/Water Quality

Small Business:
Yes

Location Where Violation Occurred:
Northeast corner of the intersection of State Highway 21 and County Road 190, Dale, Caldwell County

Type of Operation:
Trucking transportation depot

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: February 18, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed:	\$1,574
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:	\$1,574
SEP Conditional Offset:	N/A

Compliance History Classifications:
Person/CN – Average
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

ANTONIO REYES D/B/A IVYS TRUCKING

RN105823033

Docket No. 2010-0606-MLM-E

Investigation Information

Complaint Date: July 27, 2009
Complaint Information: Complainant alleged improper storage of used oil and waste at the site.
Date(s) of Investigation: August 10, 2009; March 31, 2010
Date(s) of NOV(s): October 29, 2009
Date(s) of NOE(s): April 12, 2010

Violation Information

1. Failed to maintain a copy of the bills of lading for each shipment of used oil filters for at least three years after the date the filters were transported, stored, or processed [30 TEX. ADMIN. CODE § 328.25(b)].
2. Failed to obtain authorization to discharge storm water associated with industrial activities under the TPDES MSGP TXR050000 [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c)].
3. Failed to clearly mark or label used oil containers with the words "Used Oil" [30 TEX. ADMIN. CODE § 324.6 and 40 C.F.R. § 279.22(c)].

Corrective Actions/Technical Requirements

Corrective Action Completed:

N/A

Technical Requirements:

1. Immediately, begin maintaining copies of all bills of lading for each shipment of used oil filters for a period of three years.
2. Within 15 days, label all containers that contain used oil with the words "Used Oil".
3. Within 30 days, submit a Storm Water Pollution Prevention Plan and a Notice of Intent to comply with the Multi-Sector Industrial General Permit requirements.
4. Within 45 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition Filed: November 18, 2010
Date Green Card Signed: November 19, 2010
Date Answer Filed: N/A
SOAH Referral Date: N/A
Hearing Date: N/A

Contact Information

TCEQ Attorneys: Ms. Stephanie Frazee, Litigation Division, MC 175, (512) 239-3400
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Mr. Harvey Wilson, Air Enforcement Section, (512) 239-0321

TCEQ Regional Contact: Mr. Barry Kalda, Austin Regional Office, MC R-11, (512) 339-2929

Respondent: Mr. Antonio Reyes, 7733 Marble Crest Drive, Austin, Texas 78747

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	12-Apr-2010	Screening	15-Apr-2010	EPA Due	
	PCW	29-Jul-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Antonio Reyes dba Ivys Trucking
Reg. Ent. Ref. No.	RN105823033
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	39521	No. of Violations	1	
Docket No.	2010-0606-MLM-E	Order Type	1660	
Media Program(s)	Used Oil Filter	Government/Non-Profit	No	
Multi-Media	Water Quality	Enf. Coordinator	Harvey Wilson	
		EC's Team	Enforcement Team 3	
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$12
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Notes
An enhancement is recommended due to the Respondent having received one NOV for the same or a similar violation.

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 \$3
Approx. Cost of Compliance \$100
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$262
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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	\$262
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$262
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DEFERRAL		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	\$262
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Screening Date 15-Apr-2010

Docket No. 2010-0606-MLM-E

PCW

Respondent Antonio Reyes dba Ivys Trucking

Policy Revision 2 (September 2002)

Case ID No. 39521

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105823033

Media [Statute] Used Oil Filter

Enf. Coordinator Harvey Wilson

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>)	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	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

An enhancement is recommended due to the Respondent having received one NOV for the same or a similar violation.

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

Screening Date	15-Apr-2010	Docket No.	2010-0606-MLM-E	PCW
Respondent	Antonio Reyes dba Ivys Trucking			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39521			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN105823033			
Media [Statute]	Used Oil Filter			
Enf. Coordinator	Harvey Wilson			
Violation Number	<input type="text" value="1"/>			
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 328.25(b)"/>			
Violation Description	<input type="text" value="Failed to maintain a copy of the bills of lading for each shipment of used oil filters for at least three years after the date the filters were transported, stored, or processed. Specifically, at the time of the investigation here were no manifests or bills of lading available for review."/>			
	Base Penalty	<input type="text" value="\$2,500"/>		

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>				
	Adjustment	<input type="text" value="\$2,250"/>			

Violation Events

Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="15"/>	Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$250"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input checked="" type="text" value="x"/>	
<input type="text" value="One single event is recommended, from the date of the investigation (March 31, 2010) until the date of screening (April 15, 2010)."/>			

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	<input type="text" value="mark with x"/>
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>	
	Violation Subtotal	<input type="text" value="\$250"/>

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

Estimated EB Amount	<input type="text" value="\$3"/>	Violation Final Penalty Total	<input type="text" value="\$263"/>
		This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$263"/>

Economic Benefit Worksheet

Respondent Antonio Reyes dba Ivys Trucking
Case ID No. 39521
Reg. Ent. Reference No. RN105823033
Media Used Oil Filter
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	\$100	31-Mar-2010	1-Dec-2010	0.67	\$3	n/a	\$3
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: The estimated cost of developing and implementing a record keeping system to maintain a copy of bills of lading for each shipment of used oil filters. Date Required was the date of the investigation. 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	\$100	TOTAL	\$3
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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	12-Apr-2010	Screening	15-Apr-2010	EPA Due	
	PCW	29-Jul-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Antonio Reyes dba Ivys Trucking
Reg. Ent. Ref. No.	RN105823033
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39521	No. of Violations	1
Docket No.	2010-0606-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media	Used Oil / Used Oil Filters	Enf. Coordinator	Harvey Wilson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit	Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,000
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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	\$50
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Notes: An enhancement is recommended because the Respondent received one NOV for the same or a similar violation.

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 \$34
 Approx. Cost of Compliance \$1,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,050
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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	\$1,050
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,050
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DEFERRAL		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	\$1,050
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Screening Date 15-Apr-2010

Docket No. 2010-0606-MLM-E

PCW

Respondent Antonio Reyes dba Ivys Trucking

Policy Revision 2 (September 2002)

Case ID No. 39521

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105823033

Media [Statute] Water Quality

Enf. Coordinator Harvey Wilson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

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

An enhancement is recommended because the Respondent received one NOV for the same or a similar violation.

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

Screening Date	15-Apr-2010	Docket No.	2010-0606-MLM-E	PCW
Respondent	Antonio Reyes dba Ivys Trucking			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39521			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN105823033			
Media [Statute]	Water Quality			
Enf. Coordinator	Harvey Wilson			
Violation Number	1			
Rule Cite(s)	40 Code of Federal Regulations § 122.26(c) and 30 Tex. Admin. Code § 281.25(a)(4)			
Violation Description	Failed to obtain authorization to discharge storm water associated with industrial activities under the Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") TXR050000. Specifically, the Respondent was operating a truck depot (SIC 4212) without a TPDES permit.			
		Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent 0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent 10%
Matrix Notes	100% of the rule requirement was not met.				
					Adjustment \$9,000

Violation Events

Number of Violation Events	1	15	Number of violation days
<i>mark only one with an x</i>	daily		Violation Base Penalty \$1,000
	weekly		
	monthly	x	
	quarterly		
	semiannual		
	annual		
	single event		
One monthly event is recommended, from the investigation date (March 31, 2010) until the screening date (April 15, 2010).			

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement
Extraordinary		
Ordinary		
N/A		mark with x
Notes		
		Violation Subtotal \$1,000

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

Estimated EB Amount	\$34	Violation Final Penalty Total	\$1,050
		This violation Final Assessed Penalty (adjusted for limits)	\$1,050

Economic Benefit Worksheet

Respondent Antonio Reyes dba Ivys Trucking
Case ID No. 39521
Reg. Ent. Reference No. RN105823033
Media Water Quality
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
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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	\$1,000	31-Mar-2010	1-Dec-2010	0.67	\$34	n/a	\$34
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of obtaining coverage under TPDES Mul i-Sector Permit TXR050000. Date Required is the date of the investigation. 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

\$34



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	12-Apr-2010	Screening	15-Apr-2010	EPA Due	
	PCW	29-Jul-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Antonio Reyes dba Ivys Trucking
Reg. Ent. Ref. No.	RN105823033
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	39521	No. of Violations	1	
Docket No.	2010-0606-MLM-E	Order Type	1660	
Media Program(s)	Used Oil	Government/Non-Profit	No	
Multi-Media	Water Quality	Enf. Coordinator	Harvey Wilson	
		EC's Team	Enforcement Team 3	
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$12
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Notes An enhancement is recommended due the Respondent having received one NOV for the same or a similar violation.

Culpability	0.0% Enhancement	Subtotal 4	\$0
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Notes

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 \$0
 Approx. Cost of Compliance \$10
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$262
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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	\$262
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$262
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DEFERRAL		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	\$262
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Screening Date 15-Apr-2010

Docket No. 2010-0606-MLM-E

PCW

Respondent Antonio Reyes dba Ivys Trucking

Policy Revision 2 (September 2002)

Case ID No. 39521

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105823033

Media [Statute] Used Oil

Enf. Coordinator Harvey Wilson

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>)	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	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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

An enhancement is recommended due the Respondent having received one NOV for the same or a similar violation.

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

Screening Date	15-Apr-2010	Docket No.	2010-0606-MLM-E	PCW
Respondent	Antonio Reyes dba Ivys Trucking			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39521			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN105823033			
Media [Statute]	Used Oil			
Enf. Coordinator	Harvey Wilson			
Violation Number	1			
Rule Cite(s)	40 Code of Federal Regulations § 279.22(c) and 30 Tex. Admin. Code § 324.6			
Violation Description	Failed to clearly mark or label used oil containers with the words "Used Oil." Specifically, a tote used to store used oil was not labeled Used Oil.			
		Base Penalty	\$2,500	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent 0%
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent 10%
Matrix Notes	100% of the rule requirement was not met.				
					Adjustment \$2,250

\$250

Violation Events

Number of Violation Events	1	15	Number of violation days
<i>mark only one with an x</i>	daily		Violation Base Penalty \$250
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event	x	
One single event is recommended, from the date of the investigation (March 31, 2010) until the date of screening (April 15, 2010).			

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement
Extraordinary		
Ordinary		
N/A	x	mark with x
Notes	The Respondent does not meet the good faith criteria for this violation.	
		Violation Subtotal \$250

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

Estimated EB Amount	\$0	Violation Final Penalty Total	\$263
		This violation Final Assessed Penalty (adjusted for limits)	\$263

Economic Benefit Worksheet

Respondent Antonio Reyes dba Ivys Trucking
Case ID No. 39521
Reg. Ent. Reference No. RN105823033
Media Used Oil
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$10	31-Mar-2010	1-Dec-2010	0.67	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of labeling the used oil storage tote. Date Required is the date of the investigation. 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

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603573791 REYES, ANTONIO	Classification: Average	Rating: 2.71
Regulated Entity:	RN105823033 IVYS TRUCKING	Classification: Average	Site Rating: 3.01
Location:	THE INTERSECTION OF STATE HIGHWAY 21 AND COUNTY ROAD 190 IN CALDWELL COUNTY, TEXAS		
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	April 15, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 15, 2005 to April 15, 2010		

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

Name: Harvey Wilson Phone: 239 - 0321

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

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
 - N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
 - N/A
 - C. Chronic excessive emissions events.
 - N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 04/08/2010 (797770)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No)
 - Date: 10/29/2009 (780098)
 - Self Report? NO Classification: Moderate
 - Citation: 40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)
 - Description: Failure to properly label containers used to store used oil at generator facilities with the words "Used Oil."
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 328, SubChapter D 328.25(b)
 - Description: Failure to maintain a copy of the bill of lading for each shipment of used oil filters by the generator of the filters, transporter of the filters, storage facility at which the filters were stored, and processor of the filters for at least three years after the date the filters were transported, stored, or processed.
 - Self Report? NO Classification: Major
 - Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 - Description: Failure to obtain the Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector General Permit (MSGP) for Industrial Storm Water (TXR050000).
 - 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	
ENFORCEMENT ACTION	§	BEFORE THE
CONCERNING	§	
ANTONIO REYES D/B/A IVYS	§	TEXAS COMMISSION ON
TRUCKING;	§	
RN105823033	§	ENVIRONMENTAL QUALITY

DEFAULT ORDER

DOCKET NO. 2010-0606-MLM-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. 371, 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 Antonio Reyes d/b/a Ivys Trucking ("Respondent").

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

FINDINGS OF FACT

1. Respondent operates a trucking transportation depot located on the northeast corner of the intersection of State Highway 21 and County Road 190, in Dale, Caldwell County, Texas (the "Site"). The Facility involves the management and/or the disposal of used oil and used oil filters as defined in TEX. HEALTH & SAFETY CODE ch. 371. Respondent has discharged waste from the Site into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
2. During an investigation conducted on March 31, 2010, a TCEQ Austin Regional Office investigator documented that Respondent:
 - a. Failed to maintain a copy of the bills of lading for each shipment of used oil filters for at least three years after the date the filters were transported, stored, or processed. Specifically, there were no manifests or bills of lading available for review;
 - b. Failed to obtain authorization to discharge storm water associated with industrial activities under the Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") TXR050000. Specifically, Respondent was operating a truck depot (SIC 4212) without a TPDES permit; and

- c. Failed to clearly mark or label used oil containers with the words "Used Oil." Specifically, a tote used to store used oil was not labeled "Used Oil."
3. Respondent received notice of the violations on or about April 17, 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 Antonio Reyes d/b/a Ivys Trucking" (the "EDPRP") in the TCEQ Chief Clerk's office on November 18, 2010.
5. By letter dated November 18, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on November 19, 2010, as evidenced by the signature on the card.
6. More than 20 days have elapsed since Respondent received notice of the EDPRP provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 371, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to maintain a copy of the bills of lading for each shipment of used oil filters for at least three years after the date the filters were transported, stored, or processed, in violation of 30 TEX. ADMIN. CODE § 328.25(b).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to obtain authorization to discharge storm water associated with industrial activities under the TPDES MSGP TXR050000, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to clearly mark or label used oil containers with the words "Used Oil," in violation of 30 TEX. ADMIN. CODE § 324.6 and 40 C.F.R. § 279.22(c).
5. As evidenced by Findings of Fact Nos. 4 and 5, 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(a).
6. As evidenced by Finding of Fact No. 6, 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.

7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent 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 one thousand five hundred seventy-four dollars (\$1,574.00) 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. Respondent is assessed an administrative penalty in the amount of one thousand five hundred seventy-four dollars (\$1,574.00) for violations of state statutes and 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.
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: Antonio Reyes d/b/a Ivys Trucking; Docket No. 2010-0606-MLM-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. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Respondent shall begin maintaining copies of all bills of lading for each shipment of used oil filters for a period of three years, in accordance with 30 TEX. ADMIN. CODE § 328.25;
 - b. Within 15 days after the effective date of this Order, Respondent shall label all containers that contain used oil with the words "Used Oil", in accordance with 30 TEX. ADMIN. CODE § 324.6;

- c. Within 30 days after the effective date of this Order, Respondent shall submit a Storm Water Pollution Prevention Plan and a Notice of Intent to comply with the Multi-Sector Industrial General Permit requirements, in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c) to:

Texas Commission on Environmental Quality
Wastewater Permitting Section, MC 148
P.O. Box 13087
Austin, Texas 78711-3087

- d. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 3.a. through 3.c. The certification shall be notarized by a State of Texas Notary Public and shall 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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and

Waste Section Manager
Texas Commission on Environmental Quality
Austin Regional Office
2800 South IH 35, Suite 100
Austin, Texas 78704-5712

4. All relief not expressly granted in this Order is denied.
5. 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 Site operations referenced in this Order.

6. 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.
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 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.
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 Respondent if the Executive Director determines that Respondent has 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 STEPHANIE J. FRAZEE

STATE OF TEXAS

§
§
§

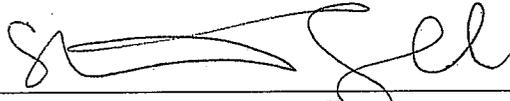
COUNTY OF TRAVIS

"My name is Stephanie J. Frazee. 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 Antonio Reyes d/b/a Ivys Trucking," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 18, 2010.

The EDPRP was mailed to Respondent's last known address on November 18, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on November 19, 2010, as evidenced by the signature on the card.

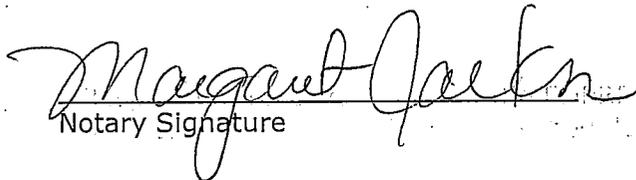
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Stephanie J. Frazee, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Stephanie J. Frazee, 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 28th day of January, A.D. 2011.



Notary Signature

