

Executive Summary – Enforcement Matter – Case No. 39435  
VICKERS INDUSTRIAL COATINGS, INC.  
RN101517399  
Docket No. 2010-0519-IHW-E

**Order Type:**  
Default Order

**Findings Order Justification:**  
N/A

**Media:**  
IHW

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
16537 Shady Lane, Channelview, Harris County

**Type of Operation:**  
inactive protective paint coatings manufacturing facility

**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:** March 18, 2011  
**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$93,520  
**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:** \$93,520

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

**Major Source:** No  
**Statutory Limit Adjustment:** N/A  
**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** January 7, 2010  
**Date(s) of NOV(s):** January 27, 2006; July 24, 2009  
**Date(s) of NOE(s):** March 17, 2010

***Violation Information***

1. Failed to update the facility's Notice Registration (NOR) [30 TEX. ADMIN. CODE § 335.6(c)].
2. Failed to conduct hazardous waste determinations [30 TEX. ADMIN. CODE § 335.62, 335.503, 335.504 and 40 C.F.R. § 262.11].
3. Failed to submit complete and correct Annual Waste Summary (AWS) reports detailing the management of each hazardous and Class I waste generated on-site during the calendar year by January 25 of the following year [30 TEX. ADMIN. CODE § 335.9(a)(2)].
4. Failed to mark containers storing industrial hazardous waste with the words "Hazardous Waste" and with the date on which each accumulation period begins [30 TEX. ADMIN. CODE § 335.69(a)(2), 335.69(f)(4)(A) and 40 C.F.R. § 262.34(a)(2), (a)(3) and (d)(4)].
5. Failed to prevent the unauthorized discharge of industrial hazardous waste [30 TEX. ADMIN. CODE § 335.4].
6. Failed to prevent unauthorized storage of industrial hazardous waste [30 TEX. ADMIN. CODE § 335.2(a), 40 C.F.R. § 262.34 and 270.1(c)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**  
N/A

**Technical Requirements:**

1. Within 30 days:
  - a. Update the facility's NOR;
  - b. Conduct hazardous waste determinations and classifications on all waste generated at the facility;
  - c. Submit complete and accurate AWS reports for calendar years 2003, 2004, 2007, and 2008;
  - d. Label all containers storing industrial hazardous waste at the Facility with the beginning accumulation date and with the words "Hazardous Waste; and
  - e. Evacuate all soil contaminated with industrial hazardous waste and properly characterize and dispose of the soil at an authorized facility.
2. Within 90 days:
  - a. Properly manifest all containers and drums at the Facility which contain industrial hazardous waste and dispose of it at an authorized facility; and
  - b. Submit a closure plan for all solid waste management units at the Facility.
3. Within 105 days, submit written certification demonstrating compliance.

**Executive Summary – Enforcement Matter – Case No. 39435**  
**VICKERS INDUSTRIAL COATINGS, INC.**  
**RN101517399**  
**Docket No. 2010-0519-IHW-E**

***Litigation Information***

**Date Petition(s) Filed:** October 5, 2010  
**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:** Jeffrey Huhn, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
**TCEQ Enforcement Coordinator:** Thomas Greimel, Waste Enforcement Section, (512) 239-5690  
**TCEQ Regional Contact:** Michelle Bealle, Houston Regional Office, (713) 767-3623  
**Respondent:** Dannie L. Vickers, President, Vickers Industrial Coatings, Inc., 405 West Avenue C,  
Port Aransas 78373  
**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	22-Mar-2010	<b>Screening</b>	31-Mar-2010	<b>EPA Due</b>	
	<b>PCW</b>	9-Apr-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	VICKERS INDUSTRIAL COATINGS, INC.
<b>Reg. Ent. Ref. No.</b>	RN101517399
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	39435	<b>No. of Violations</b>	6
<b>Docket No.</b>	2010-0519-IHW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Industrial and Hazardous Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Thomas Greimel
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$83,500
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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.

<b>Compliance History</b>	12.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$10,020
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Notes: Enhancement for one previous NOV without a same or similar violation and two previous NOVs with same or similar violations.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$1,995
Approx. Cost of Compliance	\$32,655

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$93,520
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$93,520
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$93,520
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$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.

<b>PAYABLE PENALTY</b>	\$93,520
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**Screening Date** 31-Mar-2010

**Docket No.** 2010-0519-IHW-E

**PCW**

**Respondent** VICKERS INDUSTRIAL COATINGS, INC.

*Policy Revision 2 (September 2002)*

**Case ID No.** 39435

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101517399

**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>	2	10%
	Other written NOVs	1	2%
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%

*Please Enter Yes or No*

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 12%

**>> 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 without a same or similar violation and two previous NOVs with same or similar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 12%

Screening Date 31-Mar-2010

Docket No. 2010-0519-IHW-E

PCW

Respondent VICKERS INDUSTRIAL COATINGS, INC.

Policy Revision 2 (September 2002)

Case ID No. 39435

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101517399

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.6(c)

Violation Description

Failed to update the Facility's Notice of Registration (NOR). Specifically, the NOR does not include the following waste and waste management unit (WMU) information: (1) the WMU where spent solvent used to clean tanks and equipment is stored; (2) aqueous waste with low solvent content; (3) spent solvents, spent wastewater, absorbents and floor sweepings are not identified as wastes managed in WMU 001; (4) the description of wastes stored in WMU 001 does not specify that empty drums are stored there; (5) a one-time shipment to the BFI Gulf West Landfill of 12 crushed drums identified as waste no. 00053071 on waste manifest No. 3626924; and (6) the status of all waste streams and WMUs are not listed as "inactive"

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Release	Major	Moderate	
Actual				0%
Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 83 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended from the January 7, 2010 investigation date to the March 31, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,120

This violation Final Assessed Penalty (adjusted for limits) \$1,120

# Economic Benefit Worksheet

**Respondent** VICKERS INDUSTRIAL COATINGS, INC.  
**Case ID No.** 39435  
**Req. Ent. Reference No.** RN101517399  
**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)	\$100	7-Jan-2010	30-Nov-2010	0.90	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to update the Facility's NOR. Date Required is the investigation date. 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**

\$4

**Screening Date** 31-Mar-2010 **Docket No.** 2010-0519-IHW-E **PCW**  
**Respondent** VICKERS INDUSTRIAL COATINGS, INC. *Policy Revision 2 (September 2002)*  
**Case ID No.** 39435 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101517399  
**Media [Statute]** Industrial and Hazardous Waste  
**Enf. Coordinator** Thomas Greimel

**Violation Number**   
**Rule Cite(s)** 30 Tex. Admin. Code §§ 335.62, 335.503 and 335.504 and 40 Code of Federal Regulations ("CFR") § 262.11  
**Violation Description** Failed to conduct hazardous waste determinations. Specifically, the waste classification data submitted for the waste container rinse water waste stream contained inadequate total petroleum hydrocarbon data, the waste classification data for the absorbent material and floor sweepings waste stream generated from WMU 002 (distillation unit) contained inadequate U.S. Environmental Protection Agency listed hazardous waste data, and analytical results of floor sweeping material has not been submitted. In addition, hazardous waste determinations have not been conducted on the contents of approximately 190 55-gallon drums, 19 pallets of five-gallon containers, seven pallets of one-gallon containers, 12 pallets of pigment powder bags, and boxes of glass jars containing unknown chemicals.  
**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>>Programmatic Matrix	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="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**

**Violation Events**

Number of Violation Events   Number of violation days  
*mark only one with an x*  
 daily   
 weekly   
 monthly   
 quarterly   
 semiannual   
 annual   
 single event   
**Violation Base Penalty**   
 Seven single events are recommended for seven waste streams (waste container rinse water, absorbent material/floor sweepings, and waste in 55-gallon drums, five-gallon containers, one-gallon containers, pigment powder bags, and glass jars) for which hazardous waste determinations were not conducted.

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

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

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$157"/>	Violation Final Penalty Total <input type="text" value="\$19,600"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$19,600"/>	

# Economic Benefit Worksheet

**Respondent** VICKERS INDUSTRIAL COATINGS, INC.  
**Case ID No.** 39435  
**Req. Ent. Reference No.** RN101517399  
**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)	\$3,500	7-Jan-2010	30-Nov-2010	0.90	\$157	n/a	\$157

**Notes for DELAYED costs**  
 Estimated cost to conduct hazardous waste determinations on waste container rinse water, absorbent material/floor sweepings and waste in 55-gallon drums, five-gallon containers, one-gallon containers, pigment powder bags, and glass jars. 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

\$3,500

**TOTAL**

\$157

Screening Date 31-Mar-2010

Docket No. 2010-0519-IHW-E

PCW

Respondent VICKERS INDUSTRIAL COATINGS, INC.

Policy Revision 2 (September 2002)

Case ID No. 39435

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101517399

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 335.9(a)(2)

Violation Description

Failed to submit complete and correct Annual Waste Summary (AWS) reports detailing the management of each hazardous and Class I waste generated on-site during the calendar year by January 25 of the following year. Specifically, AWS reports for calendar years 2003 and 2004 were submitted on July 29, 2004, and August 31, 2005, respectively, and did not list spent solvent and absorbent material used to clean up spills of universal waste and other waste streams which were generated at the Facility; the AWS report for calendar year 2007 was incomplete; and no AWS report was submitted for calendar year 2008. Specifically, 21 drums with hazardous waste labels were not marked with the date on which accumulation began, including waste containers with labels which indicated they contained glycolic acid, methyl ethyl ketone, methanol, combustible liquid, and flammable contents.

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	Harm			Percent
		Major	Moderate	Minor	
		x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 4 Number of violation days 2257

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$4,000

Four single events are recommended for calendar years 2003, 2004, 2007, and 2008.

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 \$4,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$90

Violation Final Penalty Total \$4,480

This violation Final Assessed Penalty (adjusted for limits) \$4,480

# Economic Benefit Worksheet

**Respondent** VICKERS INDUSTRIAL COATINGS, INC.  
**Case ID No.** 39435  
**Req. Ent. Reference No.** RN101517399  
**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)	\$2,000	7-Jan-2010	30-Nov-2010	0.90	\$90	n/a	\$90

Notes for DELAYED costs

Estimated cost to properly prepare and submit annual waste summaries for calendar years 2003, 2004, 2007, and 2008. 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

\$2,000

**TOTAL**

\$90

Screening Date 31-Mar-2010

Docket No. 2010-0519-IHW-E

PCW

Respondent VICKERS INDUSTRIAL COATINGS, INC.

Policy Revision 2 (September 2002)

Case ID No. 39435

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101517399

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 335.69(a)(2) and (f)(4)(A) and 40 CFR § 262.34(a)(2), (a)(3), and (d)(4)

Violation Description

Failed to mark containers storing IHW with the words "Hazardous Waste" and with the date on which each accumulation period began. Specifically, 21 drums with hazardous waste labels were not marked with the date on which accumulation began, including waste containers with labels which indicated they contained glycolic acid, methyl ethyl ketone, methanol, combustible liquid, and flammable contents.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
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 21 83 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$52,500

Twenty-one single events are recommended (one event for each container).

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 \$52,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$24

Violation Final Penalty Total \$58,800

This violation Final Assessed Penalty (adjusted for limits) \$58,800

# Economic Benefit Worksheet

**Respondent** VICKERS INDUSTRIAL COATINGS, INC.  
**Case ID No.** 39435  
**Req. Ent. Reference No.** RN101517399  
**Media** Industrial and Hazardous Waste  
**Violation No.** 4

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)	\$525	7-Jan-2010	30-Nov-2010	0.90	\$24	n/a	\$24

Notes for DELAYED costs

Estimated cost to label 21 hazardous waste containers with the accumulation begin date. 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

\$525

**TOTAL**

\$24

Screening Date 31-Mar-2010

Docket No. 2010-0519-IHW-E

PCW

Respondent VICKERS INDUSTRIAL COATINGS, INC.

Policy Revision 2 (September 2002)

Case ID No. 39435

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101517399

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

Violation Number 5

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

Violation Description Failed to prevent the unauthorized discharge of IHW. Specifically, a 55-gallon drum and the contents of two one gallon containers and one five gallon container containing chemical waste used in the paint coatings industry was discharged to soil at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (10%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 83

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

Violation Base Penalty \$1,000

One quarterly event is recommended from the January 7, 2010 investigation date to the March 31, 2010 screening date.

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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$49

Violation Final Penalty Total \$1,120

This violation Final Assessed Penalty (adjusted for limits) \$1,120

# Economic Benefit Worksheet

**Respondent** VICKERS INDUSTRIAL COATINGS, INC.  
**Case ID No.** 39435  
**Req. Ent. Reference No.** RN101517399  
**Media** Industrial and Hazardous Waste  
**Violation No.** 5

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	\$1,000	7-Jan-2010	30-Dec-2010	0.98	\$49	n/a	\$49
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to excavate and dispose of contaminated soil. 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**

\$49

Screening Date 31-Mar-2010

Docket No. 2010-0519-IHW-E

PCW

Respondent VICKERS INDUSTRIAL COATINGS, INC.

Policy Revision 2 (September 2002)

Case ID No. 39435

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101517399

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 335.2(a) and 40 CFR §§ 262.34 and 270.1(c)

Violation Description Failed to prevent unauthorized storage of industrial hazardous waste. Specifically, Respondent stored at least 16 drums of IHW for a period of time which exceeded the 180-day storage limit.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
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 3 83 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$7,500

Three monthly events are recommended from the January 7, 2010 investigation date to the March 31, 2010 screening date.

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 \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,672

Violation Final Penalty Total \$8,400

This violation Final Assessed Penalty (adjusted for limits) \$8,400

# Economic Benefit Worksheet

**Respondent** VICKERS INDUSTRIAL COATINGS, INC.  
**Case ID No.** 39435  
**Req. Ent. Reference No.** RN101517399  
**Media** Industrial and Hazardous Waste  
**Violation No.** 6

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	\$25,530	7-Jan-2010	30-Apr-2011	1.31	\$1,672	n/a	\$1,672
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and dispose industrial solid waste. 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

\$25,530

**TOTAL**

\$1,672

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600543896 VICKERS INDUSTRIAL COATINGS, INC. Classification: AVERAGE Rating: 23.00  
 Regulated Entity: RN101517399 Vickers Industrial Coatings Classification: AVERAGE Site Rating: 23.00  
 ID Number(s): AIR NEW SOURCE PERMITS PERMIT 17017  
 AIR NEW SOURCE PERMITS ACCOUNT NUMBER HG1321J  
 AIR NEW SOURCE PERMITS AFS NUM 4820100470  
 INDUSTRIAL AND HAZARDOUS WASTE GENER EPA ID TXR000019299  
 INDUSTRIAL AND HAZARDOUS WASTE GENERATION SOLID WASTE REGISTRATION 20264

Location: 16537 SHADY LN, CHANNELVIEW, TX, 77530  
 TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: March 25, 2010  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: March 25, 2005 to March 25, 2010  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Thomas Greimel Phone: (512) 239-5690

## 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	01/27/2006	(437376)
2	07/24/2009	(455924)
3	03/17/2010	(788834)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

<b>Date:</b>	<b>11/28/2005</b>	<b>(437376)</b>	
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 335, SubChapter A 335.9(a)(1)		
Description:	Failure to maintain records on the quantity of spent solvent generated monthly.		
<b>Date:</b>	<b>01/27/2006</b>	<b>(437376)</b>	
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 335, SubChapter Q 335.474 30 TAC Chapter 335, SubChapter Q 335.479		
Description:	Failure to prepare a five-year Pollution Prevention Plan.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 335, SubChapter A 335.6(c)		
Description:	Failure to revise/update the notice of registration.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 335, SubChapter A 335.6(h)		
Description:	Failure to notify for the recycling of spent solvent, rinse water, and empty 55-gallon drums.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 335, SubChapter A 335.10(b)		
Description:	Failure to use an authorized Waste No. for a one-time shipment of nonhazardous Class 1 drums.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 335, SubChapter R 335.503 30 TAC Chapter 335, SubChapter R 335.504 40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11		
Description:	Failure to do a comprehensive waste classification for rinse water and absorbent material.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 335, SubChapter A 335.9(a)(2)		
Description:	Failure to submit correct or complete annual waste summaries.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 335, SubChapter C 335.69(f)(4)(B) 40 CFR Chapter 265, SubChapter I, PT 265, SubPT C 265.35		
Description:	Failure to have sufficient aisle space in Container Storage Area NOR 001 to readily detect problems and adequately respond to emergencies that may result.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 335, SubChapter C 335.69(f)(4)(B) 40 CFR Chapter 265, SubChapter I, PT 265, SubPT C 265.37(a)(3)		

Description: Failure to have an agreement in place with an emergency response contractor.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(2)  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(2)

Description: Failure to properly label hazardous waste containers.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter C 335.69(f)(4)(A)  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(3)

Description: Failure to label 21 drums of spent solvent with the words "Hazardous Waste."  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter C 335.69(f)(5)(B)(i)  
30 TAC Chapter 335, SubChapter C 335.69(f)(5)(B)(ii)  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(d)(5)(ii)(A)  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(d)(5)(ii)(B)

Description: Failure to post all required information next to telephones that may be used to summon emergency assistance.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter H 335.262(c)(2)(A)

Description: Failure to keep a drum of universal waste paint closed.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter H 335.262(c)(2)(F)

Description: Failure to label a drum of paint waste with the words "Universal Waste - Paint and Paint Related Wastes."  
**Date: 07/24/2009 (455924)**  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter Q 335.474  
30 TAC Chapter 335, SubChapter Q 335.479

Description: Failure to prepare a five-year Pollution Prevention Plan.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)

Description: Failure to revise/update the notice of registration.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter A 335.6(h)

Description: Failure to notify for the recycling of spent solvent, rinse water, and empty 55-gallon drums.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter A 335.10(b)

Description: Failure to use an authorized Waste No. for a one-time shipment of nonhazardous Class 1 drums.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter R 335.503  
30 TAC Chapter 335, SubChapter R 335.504  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11

Description: Failure to do a comprehensive waste classification for rinse water and absorbent material.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter A 335.9(a)(2)

Description: Failure to submit correct or complete annual waste summaries.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter C 335.69(f)(4)(B)  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT C 265.37(a)(3)

Description: Failure to have an agreement in place with an emergency response contractor.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(2)  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(2)

Description: Failure to properly label hazardous waste containers.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter C 335.69(f)(5)(B)(i)  
30 TAC Chapter 335, SubChapter C 335.69(f)(5)(B)(ii)  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(d)(5)(ii)(A)  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(d)(5)(ii)(B)

Description: Failure to post all required information next to telephones that may be used to summon emergency assistance.

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  
VICKERS INDUSTRIAL COATINGS,  
INC.;  
RN101517399**

**§  
§  
§  
§  
§  
§**

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2010-0519-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 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 VICKERS INDUSTRIAL COATINGS, INC. ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns property with an inactive protective paint coatings manufacturing facility at 16537 Shady Lane in Channelview, Harris County, Texas (the "Facility"). The Facility involves or involved the management of industrial and hazardous waste ("IHW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on January 7, 2010, a TCEQ Houston Regional Office investigator documented that Respondent:
  - a. Failed to update the Facility's Notice of Registration ("NOR"). Specifically, the NOR does not include the following waste and waste management unit ("WMU") information: (1) the WMU where spent solvent used to clean tanks and equipment is stored; (2) aqueous waste with low solvent content; (3) spent solvents, spent wastewater, absorbents and floor sweepings are not identified as wastes managed in WMU 001; (4) the description of wastes stored in WMU 001 does not specify that empty drums are stored there; (5) a one-time shipment to the BFI Gulf West Landfill of 12 crushed drums identified as waste no. 00053071 on waste manifest No. 3626924; and (6) the status of all waste streams and WMUs are not listed as "inactive";
  - b. Failed to conduct hazardous waste determinations. Specifically, the waste classification data submitted for the waste container rinse water waste stream contained inadequate total petroleum hydrocarbon data, the waste classification data for the absorbent material and floor sweepings waste stream generated from WMU 002 (distillation unit) contained inadequate U.S. Environmental Protection Agency listed hazardous waste data, and analytical results of floor sweeping material has not been submitted. In addition,

hazardous waste determinations have not been conducted on the contents of approximately 190 55-gallon drums, 19 pallets of five-gallon containers, seven pallets of one-gallon containers, 12 pallets of pigment powder bags, and boxes of glass jars containing unknown chemicals;

- c. Failed to submit complete and correct Annual Waste Summary ("AWS") reports detailing the management of each hazardous and Class I waste generated on-site during the calendar year by January 25 of the following year. Specifically, AWS reports for calendar years 2003 and 2004 were submitted on July 29, 2004, and August 31, 2005, respectively, and did not list spent solvent and absorbent material used to clean up spills of universal waste and other waste streams which were generated at the Facility; the AWS report for calendar year 2007 was incomplete; and no AWS report was submitted for calendar year 2008.
  - d. Failed to mark containers storing IHW with the words "Hazardous Waste" and with the date on which each accumulation period began. Specifically, 21 drums with hazardous waste labels were not marked with the date on which accumulation began, including waste containers with labels which indicated they contained glycolic acid, methyl ethyl ketone, methanol, combustible liquid, and flammable contents;
  - e. Failed to prevent the unauthorized discharge of IHW. Specifically, a 55-gallon drum and the contents of two one gallon containers and one five gallon container containing chemical waste used in the paint coatings industry was discharged to soil at the Facility; and
  - f. Failed to prevent unauthorized storage of industrial hazardous waste. Specifically, Respondent stored at least 16 drums of IHW for a period of time which exceeded the 180-day storage limit.
3. Respondent received notice of the violations on or about March 22, 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 VICKERS INDUSTRIAL COATINGS, INC." (the "EDPRP") in the TCEQ Chief Clerk's office on October 5, 2010.
  5. By letter dated October 5, 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. 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.
  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 and failed to request a hearing.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to update the Facility's Notice of Registration ("NOR"), in violation of 30 TEX. ADMIN. CODE § 335.6(c).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to conduct hazardous waste determinations, in violation of 30 TEX. ADMIN. CODE §§ 335.62, 335.503, 335.504 and 40 C.F.R. § 262.11.
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to submit complete and correct AWS reports by the report due date, in violation of 30 TEX. ADMIN. CODE § 335.9(a)(2).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to mark containers storing IHW with the words "Hazardous Waste" and with the date on which each accumulation period began, in violation of 30 TEX. ADMIN. CODE § 335.69(a)(2) and (f)(4)(A) and 40 C.F.R. § 262.34(a)(2), (a)(3), and (d)(4).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to prevent the unauthorized discharge of IHW, in violation of 30 TEX. ADMIN. CODE § 335.4.
7. As evidenced by Finding of Fact No. 2.f., Respondent failed to prevent unauthorized storage of IHW, in violation of 30 TEX. ADMIN. CODE § 335.2(a) and 40 C.F.R. §§ 262.34 and 270.1(c).
8. 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(c)(2).
9. 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.
10. 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.
11. An administrative penalty in the amount of ninety-three thousand five hundred twenty dollars (\$93,520.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
12. 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 ninety-three thousand five hundred twenty dollars (\$93,520.00) 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: VICKERS INDUSTRIAL COATINGS, INC.; Docket No. 2010-0519-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. Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order Respondent shall:
    - i. Update the Facility's NOR, in accordance with 30 TEX. ADMIN. CODE § 335.6 (Conclusion of Law No. 2);
    - ii. Conduct hazardous waste determinations and classifications on all waste generated at the Facility, in accordance with 30 TEX. ADMIN. CODE § 335.62 and 40 C.F.R. § 262.11 (Conclusion of Law No. 3);
    - iii. Submit complete and accurate AWS reports for calendar years 2003, 2004, 2007 and 2008, in accordance with 30 TEX. ADMIN. CODE § 335.9 (Conclusion of Law No. 4);
    - iv. Label all containers storing IHW at the Facility with the beginning accumulation date and with the words "Hazardous Waste," in accordance with 30 TEX. ADMIN. CODE § 335.69 and 40 C.F.R. § 262.34 (Conclusion of Law No. 5); and
    - v. Excavate all soil at the Facility contaminated with IHW and properly characterize and dispose of the soil at an authorized facility (Conclusion of Law No. 6).
  - b. Within 90 days after the effective date of this Order Respondent shall:
    - i. Properly manifest all containers and drums at the Facility which contain IHW and dispose of it at an authorized facility (Conclusion of Law No. 7); and

- ii Submit a closure plan for all solid waste management units at the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 335.8, 335.112(a)(6), and 335.118 (Conclusion of Law No. 7).
- c. Within 105 days after the effective date of this Commission Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a.i. through 3.b.ii.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

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

- 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 Facility 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.

VICKERS INDUSTRIAL COATINGS, INC.  
Docket No. 2010-0519-IHW-E  
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**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF JEFFREY J. HUHN**

STATE OF TEXAS

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§  
§

COUNTY OF BEXAR

"My name is Jeffrey J. Huhn. 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 VICKERS INDUSTRIAL COATINGS, INC," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 5, 2010.

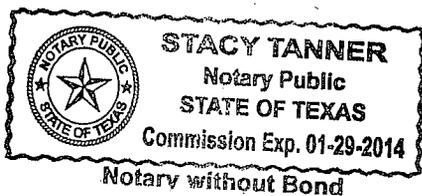
The EDPRP was mailed to Respondent's last known address on October 5, 2010 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." 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).

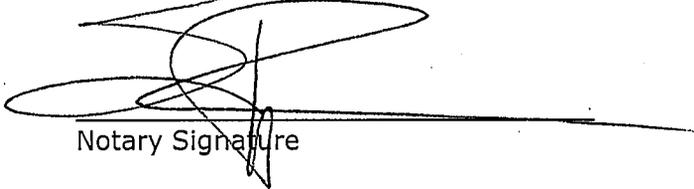
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

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

Before me, the undersigned authority, on this day personally appeared Jeffrey J. Huhn, 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 22 day of February, A.D. 2011.



  
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Notary Signature