

Executive Summary – Enforcement Matter – Case No. 47908
K & D MARINE, LLC dba Dustin Gulf Seafood
RN104919832
Docket No. 2013-2031-MLM-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM – IHW and Used Oil

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Dustin Gulf Seafood, 3885 Martin Luther King Jr. Drive, Port Arthur, Jefferson County

Type of Operation:

Fish and seafood unloading facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: April 11, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$12,337

Amount Deferred for Expedited Settlement: \$2,467

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$9,870

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: August 14, 2013

Date(s) of NOE(s): October 11, 2013

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K & D MARINE, LLC dba Dustin Gulf Seafood
RN104919832
Docket No. 2013-2031-MLM-E

Violation Information

1. Failed to prevent the unauthorized disposal of industrial solid waste (“ISW”). Specifically, lead-acid batteries, wood and litter were disposed to soil and Sabine Lake. Analytical results of soil samples detected elevated levels of total chromium concentrations of 179 and 184 milligrams per kilogram (“mg/kg”) and total lead concentrations of 7.95 and 8.21 mg/kg [30 TEX. ADMIN. CODE § 335.4 and TEX. WATER CODE § 26.121].
2. Failed to prevent, abate, and perform cleanup of used oil spills. Specifically, used oil was discharged to soil. Analytical results of soil samples detected total petroleum hydrocarbon concentrations of 4,233 and 4,376 mg/kg [30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS (“CFR”) § 279.22(d)].
3. Failed to label used oil containers with the words “Used Oil.” Specifically, a five-gallon bucket was observed without the words “Used Oil” [30 TEX. ADMIN. CODE § 324.6 and 40 CFR § 279.22(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Immediately, cease disposing of any additional ISW at the Facility.
- b. Within 30 days:
 - i. Remove all ISW, including but not limited to scrap wood, used oil and lead-acid batteries, from the Facility and dispose of the ISW at an authorized facility; and
 - ii. Label all used oil containers with the words “Used Oil.”
- c. Within 60 days, submit a report which includes a summary of remediation activities that took place, confirming that all contaminated soil at the Facility has been properly remediated. Remediation activities shall address all areas where stained soil and soil contaminated with oil and lead-acid spills/stains were observed at the Facility, including but not limited to the area within and surrounding impacted areas of Sabine Lake. The report shall include analytical results of soil confirmation sampling which characterizes the effectiveness of contaminated soil removal in all contaminated areas and documentation that contaminated soils have been disposed of in an authorized manner.

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d. Within 75 days, submit written certification to demonstrate compliance with Ordering Provisions a. and b.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Thomas Greimel, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-5690; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456
TCEQ SEP Coordinator: N/A
Respondent: Scott Nguyen, President, K & D MARINE, LLC, 2259 Hollyridge Road, Nederland, Texas 77627
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	14-Oct-2013	Screening	14-Oct-2013	EPA Due	
	PCW	1-Nov-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	K & D MARINE, LLC dba Dustin Gulf Seafood		
Reg. Ent. Ref. No.	RN104919832		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	47908	No. of Violations	1
Docket No.	2013-2031-MLM-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media	Used Oil	Enf. Coordinator	Thomas Greimel
		EC's Team	Enforcement Team 7

Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000
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Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$11,250
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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	\$562
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Notes: Enhancement for one NOV with same/similar violations.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$209
 Approx. Cost of Compliance: \$4,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,812
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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	\$11,812
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,812
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DEFERRAL	20.0% Reduction	Adjustment	-\$2,362
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$9,450
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Screening Date 14-Oct-2013

Docket No. 2013-2031-MLM-E

PCW

Respondent K & D MARINE, LLC dba Dustin Gulf Seafood

Policy Revision 3 (September 2011)

Case ID No. 47908

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104919832

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 notices of violation ("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%

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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 5%

Screening Date 14-Oct-2013

Docket No. 2013-2031-MLM-E

PCW

Respondent K & D MARINE, LLC dba Dustin Gulf Seafood

Policy Revision 3 (September 2011)

Case ID No. 47908

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104919832

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

Violation Number 1

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

Violation Description Failed to prevent the unauthorized disposal of industrial solid waste (ISW). Specifically lead-acid batteries, wood, and litter were disposed to soil and Sabine Lake. Analytical results of soil samples detected elevated levels of total chromium concentrations of 179 and 184 milligrams per kilogram ("mg/kg") and total lead concentrations of 7.95 and 8.21 mg/kg.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (15.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0.0%).

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 3 Number of violation days 61

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

Violation Base Penalty \$11,250

Three monthly events are recommended from the August 14, 2013 investigation date to the October 14, 2013 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 \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$209

Violation Final Penalty Total \$11,813

This violation Final Assessed Penalty (adjusted for limits) \$11,813

Economic Benefit Worksheet

Respondent K & D MARINE, LLC dba Dustin Gulf Seafood

Case ID No. 47908

Reg. Ent. Reference No. RN104919832

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	\$4,000	14-Aug-2013	31-Aug-2014	1.05	\$209	n/a	\$209
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,000

TOTAL

\$209



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	14-Oct-2013	Screening	14-Oct-2013	EPA Due	
	PCW	1-Nov-2013				

RESPONDENT/FACILITY INFORMATION	
Respondent	K & D MARINE, LLC dba Dustin Gulf Seafood
Reg. Ent. Ref. No.	RN104919832
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	47908	No. of Violations	2
Docket No.	2013-2031-MLM-E	Order Type	1660
Media Program(s)	Used Oil	Government/Non-Profit	No
Multi-Media	Industrial and Hazardous Waste	Enf. Coordinator	Thomas Greimel
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$500**

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** **\$25**

Notes: Enhancement for one NOV with same/similar violations.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts: \$107
Approx. Cost of Compliance: \$2,050

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$525**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$525**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$525**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$105**

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

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$420**

Screening Date 14-Oct-2013

Docket No. 2013-2031-MLM-E

PCW

Respondent K & D MARINE, LLC dba Dustin Gulf Seafood

Policy Revision 3 (September 2011)

Case ID No. 47908

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104919832

Media [Statute] Used Oil

Enf. Coordinator Thomas Greimel

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	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)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 5%

Screening Date 14-Oct-2013

Docket No. 2013-2031-MLM-E

PCW

Respondent K & D MARINE, LLC dba Dustin Gulf Seafood

Policy Revision 3 (September 2011)

Case ID No. 47908

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104919832

Media [Statute] Used Oil

Enf. Coordinator Thomas Greimel

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 324.6 and 40 Code of Federal Regulations ("CFR") § 279.22(d)

Violation Description Failed to prevent, abate, and perform cleanup of used oil spills. Specifically used oil was discharged to soil. Analytical results of soil samples detected total petroleum hydrocarbon concentrations of 4,233 and 4,376 milligrams per kilogram.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 1

61 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One quarterly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Reduction	
	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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$105

Violation Final Penalty Total \$263

This violation Final Assessed Penalty (adjusted for limits) \$263

Economic Benefit Worksheet

Respondent K & D MARINE, LLC dba Dustin Gulf Seafood
Case ID No. 47908
Reg. Ent. Reference No. RN104919832
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
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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	\$2,000	14-Aug-2013	31-Aug-2014	1.05	\$105	n/a	\$105
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to assess, remove and dispose of used oil contamination at the Facility. The Date Required is the investigation date. The Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$105

Screening Date 14-Oct-2013

Docket No. 2013-2031-MLM-E

PCW

Respondent K & D MARINE, LLC dba Dustin Gulf Seafood

Policy Revision 3 (September 2011)

Case ID No. 47908

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104919832

Media [Statute] Used Oil

Enf. Coordinator Thomas Greimel

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 324.6 and 40 CFR § 279.22(c)

Violation Description Failed to label used oil containers with the words "Used Oil". Specifically, a five-gallon bucket was observed without the words "Used Oil".

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	X		

Percent 5.0%

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

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 1

61 Number of violation days

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

Violation Base Penalty \$250

One single event is recommended

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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$263

This violation Final Assessed Penalty (adjusted for limits) \$263

Economic Benefit Worksheet

Respondent K & D MARINE, LLC dba Dustin Gulf Seafood
Case ID No. 47908
Reg. Ent. Reference No. RN104919832
Media Used Oil
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)	\$50	14-Aug-2013	31-Aug-2014	1.05	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to properly label used oil containers. 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

\$50

TOTAL

\$3

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN604350264, RN104919832, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN604350264, K & D MARINE, LLC **Classification:** SATISFACTORY **Rating:** 4.50

Regulated Entity: RN104919832, Dustin Gulf Seafood **Classification:** SATISFACTORY **Rating:** 4.50

Complexity Points: 6 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 3885 MARTIN LUTHER KING JR DR PORT ARTHUR, TX 77640-6861, JEFFERSON COUNTY

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s):

STORMWATER PERMIT TXR05BV05

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: December 12, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 12, 2008 to December 12, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Thomas Greimel

Phone (512) 239-5690

Site and Owner/Operator History:

- 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** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1	Date:	01/24/2013	(1042881)		
	Self Report?	NO		Classification:	Major
	Citation:	2D TWC Chapter 26, SubChapter A 26.040 30 TAC Chapter 281, SubChapter A 281.25(a)(4)			
	Description:	Failure by Dustin Gulf Seafood to obtain a Multi-Sector General Permit.			
	Self Report?	NO		Classification:	Moderate
	Citation:	30 TAC Chapter 335, SubChapter A 335.4			
	Description:	Failure to properly dispose of waste.			
	Self Report?	NO		Classification:	Minor
	Citation:	30 TAC Chapter 324, SubChapter A 324.6 40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22 TWC Chapter 26 26.121			
	Description:	Failure to comply with used oil requirements and diesel spills.			
	Self Report?	NO		Classification:	Moderate
	Citation:	30 TAC Chapter 328, SubChapter D 328.23(b) 30 TAC Chapter 328, SubChapter D 328.23(d)			
	Description:	Failure to comply with general requirements for used oil filters.			
	Self Report?	NO		Classification:	Moderate
	Citation:	30 TAC Chapter 111, SubChapter B 111.201 5C THSC Chapter 382 382.085(b)			
	Description:	Failure to comply with the outdoor burning rules.			
	Self Report?	NO		Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 5A THSC Chapter 341, SubChapter A 341.011 5A THSC Chapter 341, SubChapter A 341.012(a)			
	Description:	Failure to address an unauthorized discharge of sewage.			

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
K & D MARINE, LLC DBA
DUSTIN GULF SEAFOOD
RN104919832**

**§
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§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2013-2031-MLM-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding K & D MARINE, LLC dba Dustin Gulf Seafood ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 371 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent operates a fish and seafood unloading facility at 3885 Martin Luther King Jr. Drive in Port Arthur, Jefferson County, Texas (the "Facility").
2. The Facility involves or involved the management of industrial solid waste ("ISW") and used oil as defined in TEX. HEALTH & SAFETY CODE chs. 361 and 371.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 16, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twelve Thousand Three Hundred Thirty-Seven Dollars (\$12,337) is assessed by the Commission in settlement of the violations

alleged in Section II ("Allegations"). The Respondent has paid Nine Thousand Eight Hundred Seventy Dollars (\$9,870) of the administrative penalty and Two Thousand Four Hundred Sixty-Seven Dollars (\$2,467) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As operator of the Facility, the Respondent is alleged to have:

1. Failed to prevent the unauthorized disposal of ISW, in violation of 30 TEX. ADMIN. CODE § 335.4 and TEX. WATER CODE § 26.121, as documented during an investigation conducted on August 14, 2013. Specifically lead-acid batteries, wood and litter were disposed to soil and Sabine Lake. Analytical results of soil samples detected elevated levels of total chromium concentrations of 179 and 184 milligrams per kilogram ("mg/kg") and total lead concentrations of 7.95 and 8.21 mg/kg.
2. Failed to prevent, abate, and perform cleanup of used oil spills, in violation of 30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS ("CFR") § 279.22(d), as documented during an investigation conducted on August 14, 2013. Specifically, used oil was discharged to soil. Analytical results of soil samples detected total petroleum hydrocarbon concentrations of 4,233 and 4,376 mg/kg.
3. Failed to label used oil containers with the words "Used Oil", in violation of 30 TEX. ADMIN. CODE § 324.6 and 40 CFR § 279.22(c), as documented during an investigation conducted on August 14, 2013. Specifically, a five-gallon bucket was observed without the words "Used Oil".

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: K & D MARINE, LLC dba Dustin Gulf Seafood, Docket No. 2013-2031-MLM-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease disposing of any additional ISW at the Facility.
 - b. Within 30 days after the effective date of this Agreed Order:
 - i. Remove all ISW, including but not limited to scrap wood, used oil and lead-acid batteries, from the Facility and dispose of the ISW at an authorized facility; and
 - ii. Label all used oil containers with the words "Used Oil", in accordance with 40 CFR § 279.22.
 - c. Within 60 days after the effective date of this Agreed Order, submit a report to the addresses listed in Ordering Provision No. 2.d., which includes a summary of remediation activities that took place, confirming that all contaminated soil at the Facility has been properly remediated. Remediation activities shall address all areas where stained soil and soil contaminated with oil and lead-acid spills/stains were observed at the Facility, including but not limited to the area within and surrounding impacted areas of Sabine Lake. The report shall include analytical results of soil confirmation sampling which characterizes the effectiveness of contaminated soil removal in all contaminated areas and documentation that contaminated soils have been disposed of in an authorized manner.

- d. Within 75 days after the effective date of this Agreed 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. 2.a. and 2.b. 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

 Ramon Davila
For the Executive Director

 6/16/14
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

 Scott Nguyen
Signature

 3-5-14
Date

 Scott Nguyen
Name (Printed or typed)
Authorized Representative of
K & D MARINE, LLC dba Dustin Gulf Seafood

 President
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.