

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 50757
R&K Fabricating Inc.
RN104085956
Docket No. 2015-0982-MLM-E

Order Type:

Default Order

Media:

MLM: MSW and AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

3183 Highway 146 in Dayton, Liberty County

Type of Operation:

storage container fabricating plant

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: August 26, 2016

Comments Received: None

Penalty Information

Total Penalty Assessed: \$5,047

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$5,047

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

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002 (PCW 1); April 2014 (PCWs 2 and 3)

R&K Fabricating Inc.
RN104085956
Docket No. 2015-0982-MLM-E

Investigation Information

Complaint Date(s):	February 20, 2014; December 22, 2014
Complaint Information:	Complainant alleges that the facility is taking spent sand and disposing of it along the industrial park's driveway; Complainant concerned about outdoor burning activities in the area.
Date(s) of Investigation:	February 28, 2014 through June 5, 2014
Date(s) of NOV(s):	June 16, 2014; December 9, 2014
Date(s) of NOE(s):	June 4, 2015

Violation Information

1. Failed to submit an initial notification, as specified by 40 C.F.R. Part 63, Subpart XXXXXX [TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE §§ 101.20(2) and 113.1505, and 40 C.F.R. § 63.11519(a)(1)].
2. Failed to submit a notification of compliance status, as specified by 40 C.F.R. Part 63, Subpart XXXXXX [TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE §§ 101.20(2) and 113.1505, and 40 C.F.R. § 63.11519(a)(2)].
3. Caused, suffered, allowed, or permitted unauthorized outdoor burning within the State of Texas [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 111.201].
4. Caused, suffered, allowed, or permitted the unauthorized disposal of MSW [30 TEX. ADMIN. CODE § 330.15(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately:
 - a. Cease all unauthorized outdoor burning at the Plant; and
 - b. Cease disposal of any additional MSW at the Plant.
2. Within 30 days:
 - a. Remove all MSW from the Plant and dispose of it at an authorized facility; and
 - b. Submit the initial notification and notification of compliance status for the Plant required by 40 C.F.R. Part 63, Subpart XXXXXX, in accordance with 40 C.F.R. § 63.11519.
3. Within 45 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1 and 2.

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 50757
R&K Fabricating Inc.
RN104085956
Docket No. 2015-0982-MLM-E

Litigation Information

Date Petition(s) Filed: June 29, 2016; July 18, 2016
Date Green Card(s) Signed: Unclaimed
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Elizabeth Carroll Harkrider, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Rajesh Acharya, Enforcement Division, (512) 239-0577

TCEQ Regional Contacts: Andy Goodridge, Houston Regional Office, (713) 767-3500; Jason Ybarra, Houston Regional Office, (713) 767-3500

Respondent Contact: Rick Gonzalez, President, R&K Fabricating Inc., P.O. Box 1146, Dayton, Texas 77535

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	15-Jun-2015		
	PCW	15-Jun-2016	Screening	26-Jun-2015
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	R&K Fabricating Inc.
Reg. Ent. Ref. No.	RN104085956
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	50757	No. of Violations	1
Docket No.	2015-0982-MLM-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media	Municipal Solid Waste	Enf. Coordinator	Rajesh Acharya
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	187.0% Enhancement	Subtotals 2, 3, & 7	\$1,870
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Notes: Enhancement for one NOV with same/similar violations, one NOV with dissimilar violations, one order containing a denial of liability, three counts from criminal convictions, and an unsatisfactory compliance history classification.

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: \$57
 Estimated Cost of Compliance: \$250
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,870
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OTHER FACTORS AS JUSTICE MAY REQUIRE	-100.0%	Adjustment	-\$2,870
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended reduction based on the July 12, 2012 Bankruptcy Plan of Reorganization confirmation date.

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$0
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Screening Date 26-Jun-2015

Docket No. 2015-0982-MLM-E

PCW

Respondent R&K Fabricating Inc.

Policy Revision 2 (September 2002)

Case ID No. 50757

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104085956

Media [Statute] Air

Enf. Coordinator Rajesh Acharya

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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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 judgments 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>)	3	150%
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) 177%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations, one NOV with dissimilar violations, one order containing a denial of liability, three counts from criminal convictions, and an unsatisfactory compliance history classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 187%

Screening Date	26-Jun-2015	Docket No.	2015-0982-MLM-E	PCW
Respondent	R&K Fabricating Inc.	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	50757	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN104085956			
Media [Statute]	Air			
Enf. Coordinator	Rajesh Acharya			

Violation Number

Rule Cite(s) 30 Tex. Admin. Code §§ 101.20(2) and 113.1505, 40 Code of Federal Regulations ("CFR") § 63.11519(a)(1), and Tex. Health & Safety Code § 382.085(b)

Violation Description
Failed to submit an initial notification, as specified by 40 CFR Part 63, Subpart XXXXXX, by July 25, 2011. Specifically, the Respondent is subject to 40 CFR Part 63, Subpart XXXXXX and an initial notification was due by July 25, 2011, but a notification was not submitted.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>

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

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>	

Violation Base Penalty

One single event is recommended for the notification that was not submitted.

Good Faith Efforts to Comply

Reduction

		Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
N/A	<input checked="" 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

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent R&K Fabricating Inc.
Case ID No. 50757
Reg. Ent. Reference No. RN104085956
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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)	\$250	25-Jul-2011	31-Jan-2016	4.52	\$57	n/a	\$57

Notes for DELAYED costs
 Estimated cost to submit the initial notification required by 40 CFR Part 63, Subpart XXXXXX. The Date Required is the date the notification was due. 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 **TOTAL**



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	15-Jun-2015			
	PCW	15-Jun-2016	Screening	26-Jun-2015	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	R&K Fabricating Inc.
Reg. Ent. Ref. No.	RN104085956
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	1
Enf./Case ID No.	50757	Order Type	1660
Docket No.	2015-0982-MLM-E	Government/Non-Profit	No
Media Program(s)	Air	Enf. Coordinator	Rajesh Acharya
Multi-Media	Municipal Solid Waste	EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

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

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

Compliance History	100.0% Enhancement	Subtotals 2, 3, & 7	\$1,250
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Notes: Enhancement for one NOV with same/similar violations, one NOV with dissimilar violations, one order containing a denial of liability, three counts from criminal convictions, and an unsatisfactory compliance history classification.

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: \$52
 Estimated Cost of Compliance: \$250
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	-100.0%	Adjustment	-\$2,500
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended reduction based on the July 12, 2012 Bankruptcy Plan of Reorganization confirmation date.

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$0
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Screening Date 26-Jun-2015

Docket No. 2015-0982-MLM-E

PCW

Respondent R&K Fabricating Inc.

Policy Revision 4 (April 2014)

Case ID No. 50757

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104085956

Media [Statute] Air

Enf. Coordinator Rajesh Acharya

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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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 judgments 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>)	3	150%
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) 177%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations, one NOV with dissimilar violations, one order containing a denial of liability, three counts from criminal convictions, and an unsatisfactory compliance history classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 187%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 100%

Screening Date 26-Jun-2015

Docket No. 2015-0982-MLM-E

PCW

Respondent R&K Fabricating Inc.

Policy Revision 4 (April 2014)

Case ID No. 50757

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104085956

Media [Statute] Air

Enf. Coordinator Rajesh Acharya

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 101.20(2) and 113.1505, 40 Code of Federal Regulations ("CFR") § 63.11519(a)(2), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to submit a notification of compliance status, as specified by 40 CFR Part 63, Subpart XXXXXX, by November 22, 2011. Specifically, the Respondent is subject to 40 CFR Part 63, Subpart XXXXXX and a notification of compliance status was due by November 22, 2011, but a notification was not submitted.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			5.0%
100% of the rule requirement was not met.					

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 1312 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,250

One single event is recommended for the notification that was not submitted.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$52

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent R&K Fabricating Inc.
Case ID No. 50757
Reg. Ent. Reference No. RN104085956
Media Air
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)	\$250	22-Nov-2011	31-Jan-2016	4.19	\$52	n/a	\$52

Notes for DELAYED costs

Estimated cost to submit the notification of compliance status required by 40 CFR Part 63, Subpart XXXXXX. The Date Required is the date the notification was due. 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

\$250

TOTAL

\$52

Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014



TCEQ

DATES	Assigned	15-Jun-2015	Screening	26-Jun-2015	EPA Due	
	PCW	12-Jan-2016				

RESPONDENT/FACILITY INFORMATION	
Respondent	R&K Fabricating Inc.
Reg. Ent. Ref. No.	RN104085956
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	2
Enf./Case ID No.	50757	Order Type	1660
Docket No.	2015-0982-MLM-E	Government/Non-Profit	No
Media Program(s)	Air	Enf. Coordinator	Rajesh Acharya
Multi-Media	Municipal Solid Waste	EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	100.0% Enhancement	Subtotals 2, 3, & 7	\$2,500
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Notes: Enhancement for one NOV with same/similar violations, one NOV with dissimilar violations, one order containing a denial of liability, three counts from criminal convictions, and an unsatisfactory compliance history classification.

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: \$49
 Estimated Cost of Compliance: \$94
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.9%	Adjustment	\$47
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 1.

Final Penalty Amount	\$5,047
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,047
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$5,047
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Screening Date 26-Jun-2015

Docket No. 2015-0982-MLM-E

PCW

Respondent R&K Fabricating Inc.

Policy Revision 4 (April 2014)

Case ID No. 50757

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104085956

Media [Statute] Air

Enf. Coordinator Rajesh Acharya

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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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 judgments 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>)	3	150%
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) 177%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations, one NOV with dissimilar violations, one order containing a denial of liability, three counts from criminal convictions, and an unsatisfactory compliance history classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 187%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 100%

Screening Date	26-Jun-2015	Docket No.	2015-0982-MLM-E	PCW
Respondent	R&K Fabricating Inc.			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	50757			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN104085956			
Media [Statute]	Air			
Enf. Coordinator	Rajesh Acharya			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Caused, suffered, allowed, or permitted outdoor burning within the state of Texas. Specifically, it was documented on March 6, 2014 that 0.2 cubic yard of waste, including paint cans and other painting supplies, was burned without authorization at the Plant.			
		Base Penalty	\$25,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual			x	Percent 5.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0.0%

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events: 1 1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended for the March 6, 2014 date that unauthorized outdoor burning was documented.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOE/NOV	NOE/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 \$1,250

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$47	Violation Final Penalty Total \$2,524
This violation Final Assessed Penalty (adjusted for limits) \$2,524	

Economic Benefit Worksheet

Respondent R&K Fabricating Inc.
Case ID No. 50757
Reg. Ent. Reference No. RN104085956
Media Air
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)	\$47	5-Mar-2014	6-Mar-2014	0.00	\$0	\$47	\$47

Notes for AVOIDED costs

Estimated avoided cost to collect and dispose 0.2 cubic yard of waste at a permitted municipal solid waste ("MSW") landfill rather than burning it. The Date Required is one day prior to the date that the unauthorized outdoor burning was documented. The Final Date is the date that the unauthorized outdoor burning was documented.

Approx. Cost of Compliance \$47

TOTAL \$47

Screening Date	26-Jun-2015	Docket No.	2015-0982-MLM-E	PCW
Respondent	R&K Fabricating Inc.			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	50757			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN104085956			
Media [Statute]	Air			
Enf. Coordinator	Rajesh Acharya			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 330.15(c)			
Violation Description	Caused, suffered, allowed, or permitted the unauthorized disposal of MSW. Specifically, 0.2 cubic yards of MSW, including paint cans and other painting supplies, was disposed of at the Plant.			
		Base Penalty	\$25,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual			x	Percent 5.0%
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0.0%

Matrix Notes

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events: 1 23 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,250

One quarterly event is recommended from the June 3, 2015 record review date to the June 26, 2015 screening date.

Good Faith Efforts to Comply **0.0%** Reduction \$0

	Before NOE/NOV	NOE/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 \$1,250

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$2	Violation Final Penalty Total \$2,524
This violation Final Assessed Penalty (adjusted for limits) \$2,524	

Economic Benefit Worksheet

Respondent R&K Fabricating Inc.
Case ID No. 50757
Reg. Ent. Reference No. RN104085956
Media Air
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	\$47	3-Jun-2015	31-Jan-2016	0.66	\$2	n/a	\$2
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to collect and dispose 0.2 cubic yard of waste (waste remaining after being burned) at an authorized facility. The Date Required is the record review 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 \$47

TOTAL \$2

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 CN603489022, RN104085956, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN603489022, R&K Fabricating Inc.

Classification: UNSATISFACTORY **Rating:** 141.33

Regulated Entity: RN104085956, R&K FABRICATING

Classification: UNSATISFACTORY **Rating:** 141.33

Complexity Points: 5

Repeat Violator: NO

CH Group: 14 - Other

Location: 3183 HIGHWAY 146, DAYTON, LIBERTY COUNTY, TEXAS

TCEQ Region: REGION 12 - HOUSTON

ID Number(s):

INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED EPA ID TXR000080418

AIR NEW SOURCE PERMITS ACCOUNT NUMBER LH0197T

AIR NEW SOURCE PERMITS ACCOUNT NUMBER NE0397I

INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED ID NUMBER F1766

AIR NEW SOURCE PERMITS REGISTRATION 95071

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: August 20, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 20, 2010 to August 20, 2015

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

Name: Rachel Bekowies

Phone: (512) 239-2608

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:

1 Effective Date: 11/12/2012 ADMINORDER 2011-2363-IHW-E (1660 Order-Agreed Order With Denial)

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.4

Description: Failed to prevent the unauthorized disposal of industrial solid waste. Specifically, six piles of spent sandblast/grit (approximately 500 cubic yards) were disposed of at the Facility.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.9(a)(1)

Description: Failed to maintain records of hazardous and industrial solid waste activities. Specifically, there were no hazardous waste determination, waste classification and one-year disposal records for the spent sandblast/grit.

B. Criminal convictions:

1 Conviction Date: 05/23/2011 Type of Action: COURTOORDER

Classification: Major

Rqmt Prov:

Citation: 2A TWC Chapter 7, SubChapter A 7.177

Description: On May 23, 2011, Ricardo Gonzales pleaded guilty to 1 count of intentionally or knowingly violating the Clean Air Act on October 4, 2010, in violation of Tex. Water Code section 7.177 (Cause No.11-401942; Travis County). Mr. Ricardo Gonzales was sentenced to 1 year probation, ordered to pay a fine of \$25,000, and ordered to cease all sandblasting and surface coating operations until all required permits are obtained from the TCEQ.

Classification: Major

Rqmt Prov:

Citation: 2A TWC Chapter 7, SubChapter A 7.177

Description: On May 23, 2011, Ricardo Gonzales pleaded guilty to 1 count of intentionally or knowingly violating the Clean Air Act on November 1, 2010, in violation of Tex. Water Code section 7.177 (Cause No.11-401941; Travis County). Mr. Ricardo Gonzales was sentenced to 1 year probation, ordered to pay a fine of \$25,000, and ordered to cease all sandblasting and surface coating operations until all required permits are obtained from the TCEQ.

2 Conviction Date: 05/23/2011 Type of Action: COURTOORDER

Classification: Major

Rqmt Prov:

Citation: 2A TWC Chapter 7, SubChapter A 7.177

Description: On May 23, 2011, R&K Fabrication, Inc. pleaded guilty to 1 count of intentionally or knowingly Violating the Clean Air Act, in violation of Tex. Water Code section 7.177. R & K Fabrication was ordered to pay a fine of \$175,000. The investigation conducted by the TCEQ and the Travis County Attorney's Office determined that Ricardo Gonzalez had been operating a manufacturing facility that included sandblasting and surface coating

operations that are subject to TCEQ air quality permits.

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: 11/20/2014 (1209278) CN603489022
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.4
Description: The facility failed to prevent the potential offsite discharges of industrial solid waste in such a manner as to cause the discharge of industrial solid waste into or adjacent to the waters in the state, and the creation and maintenance of a nuisance.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.9(a)(1)(A)
30 TAC Chapter 335, SubChapter A 335.9(a)(1)(B)
30 TAC Chapter 335, SubChapter A 335.9(a)(1)(D)
30 TAC Chapter 335, SubChapter A 335.9(a)(1)(F)
Description: The facility failed to have records of industrial solid waste activities for the spent sand blast regarding the character and classification, quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal. The facility indicated that RKF has the hazardous waste determination documentation and disposal records for spent sand blast but provided no documents for review.
- 2 Date: 12/09/2014 (1153016)
Self Report? NO Classification: Moderate
Citation: 40 CFR Chapter 63, SubChapter C, PT 63, SubPT XXXXXX 63.11519(a)(1)
5C THSC Chapter 382 382.085(b)
Description: Failure to submit initial notification for 40 CFR 63 Subpart XXXXXX by the required deadline.
Self Report? NO Classification: Moderate
Citation: 40 CFR Chapter 63, SubChapter C, PT 63, SubPT XXXXXX 63.11519(a)(2)
5C THSC Chapter 382 382.085(b)
Description: Failure to submit notification of compliance status for 40 CFR 63 Subpart XXXXXX by the required deadline.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THSC Chapter 382 382.085(b)
Description: Failure to prevent unauthorized outdoor burning.

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
R&K FABRICATING INC.;
RN104085956**

**§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2015-0982-MLM-E

On _____, 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 and TEX. HEALTH & SAFETY CODE chs. 361 and 382 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 R&K Fabricating Inc. ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a storage container fabricating plant located at 3183 Highway 146 in Dayton, Liberty County, Texas (the "Plant"). The Plant contains and/or involves the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation commenced on February 28, 2014, an investigator documented that Respondent:
 - a. Failed to submit an initial notification, as specified by 40 C.F.R. Part 63, Subpart XXXXXX, by July 25, 2011;
 - b. Failed to submit a notification of compliance status, as specified by 40 C.F.R. Part 63, Subpart XXXXXX, by November 22, 2011;
 - c. Caused, suffered, allowed, or permitted unauthorized outdoor burning within the State of Texas. Specifically, on March 6, 2014, 0.2 cubic yards of waste, including paint cans and other painting supplies, was burned at the Plant without authorization; and
 - d. Caused, suffered, allowed, or permitted the unauthorized disposal of MSW. Specifically, 0.2 cubic yards of MSW, including paint cans and other painting supplies, was disposed of at the Plant.
3. 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 R&K Fabricating Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on June 29, 2016.

4. The EDPRP was mailed to Respondent's last known address on June 29, 2016, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."
5. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on July 18, 2016.
6. By letter dated July 18, 2016, 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.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP. 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 chs. 361 and 382 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to submit an initial notification, as specified by 40 C.F.R. Part 63, Subpart XXXXXX, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE §§ 101.20(2) and 113.1505, and 40 C.F.R. § 63.11519(a)(1).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to submit a notification of compliance status, as specified by 40 C.F.R. Part 63, Subpart XXXXXX, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE §§ 101.20(2) and 113.1505, and 40 C.F.R. § 63.11519(a)(2).
4. As evidenced by Finding of Fact No. 2.c., Respondent caused, suffered, allowed, or permitted unauthorized outdoor burning within the State of Texas, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 111.201.
5. As evidenced by Finding of Fact No. 2.d., Respondent caused, suffered, allowed, or permitted the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
6. As evidenced by Findings of Fact Nos. 3 through 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
7. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
8. 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 TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

9. An administrative penalty in the amount of five thousand forty-seven dollars (\$5,047.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. 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 five thousand forty-seven dollars (\$5,047.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only 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 violations which are not raised here.
2. The 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 TCEQ and shall be sent with the notation "Re: R&K Fabricating Inc.; Docket No. 2015-0982-MLM-E" to:

Financial Administration Division
Revenue Operations Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
3. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order:
 - i. Cease all unauthorized outdoor burning at the Plant; and
 - ii. Cease disposal of any additional MSW at the Plant.
 - b. Within 30 days after the effective date of this Order:
 - i. Remove all MSW from the Plant and dispose of it at an authorized facility; and
 - ii. Submit the initial notification and notification of compliance status for the Plant required by 40 C.F.R. Part 63, Subpart XXXXXX, in accordance with 40 C.F.R. § 63.11519.
 - c. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b. The certification shall be accompanied by detailed supporting

documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall include the following certification language:

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

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

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

and:

Air Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Street, Suite H
Houston, Texas 77023-1452

and:

Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Street, 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 Plant operations referenced in this Order.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.

7. 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.
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. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
10. 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.
11. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

AFFIDAVIT OF ELIZABETH CARROLL HARKRIDER

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Elizabeth Carroll Harkrider. 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 R&K Fabricating Inc." (the "EDPRP") was filed in the TCEQ Chief Clerk's office on June 29, 2016.

The EDPRP was mailed to Respondent's last known address on June 29, 2016, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on July 18, 2016.

The EDPRP was mailed to Respondent's last known address on July 18, 2016, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

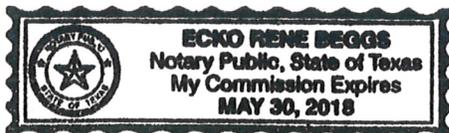
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



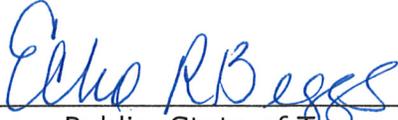
Elizabeth Carroll Harkrider, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Subscribed and sworn to before me on this 9th day of August, A.D. 2016.



Notary without Bond



Notary Public, State of Texas