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January 5, 2009

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 JAN -5 PM 4: 15
CHIEF CLERKS OFFICE

VIA HAND DELIVERY

Ms. LaDonna Castañuela (MC-105)
Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F
Austin, Texas 78753

Re: Texas Commission on Environmental Quality, Petitioner, v. Joe McHaney dba Envirosol Environmental Services, Respondent; SOAH Docket No. 582-07-1986; TCEQ Docket No. 2005-1742-MLM-E

Dear Ms. Castañuela:

Pursuant to 30 TAC §1.10, as amended, enclosed please find an original and eight copies of Respondent's Exceptions to and Brief in Support of the Proposal for Decision to be filed in the above-referenced proceeding. Please file-mark the remaining copy and return it to me via our courier delivering same.

Please let me know if you have any questions. Thank you for your attention to this matter.

Sincerely,

Ali Abazari

Enclosure
cc: Hon. Carol Wood *Via Hand Delivery*
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701

Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 502
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Via Hand Delivery

Lena Roberts
Litigation Division – MC 175
Texas Commission on Environmental Quality
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Via Hand Delivery

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 JAN -5 PM 4:16

CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-07-1986
TCEQ DOCKET NO. 2005-1742-MLM-E

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, PETITIONER	§	**BEFORE THE**
VS.	§	**STATE OFFICE OF**
JOE MCHANEY DBA ENVIROSOL ENVIRONMENTAL SERVICES; RN102806304, RESPONDENT	§	**ADMINISTRATIVE HEARINGS**

RESPONDENT'S EXCEPTIONS TO AND BRIEF IN SUPPORT OF THE PROPOSAL FOR DECISION

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Respondent, Joe McHaney dba Envirosol Environmental Services, files this its Exceptions to and Brief in Support of the Administrative Law Judge's Proposal for Decision ("PFD") rendered on December 16, 2008, and respectfully states as follows:

I. INTRODUCTION

This is a simple enforcement matter dealing with simple tenets of waste regulations. The evidence to support the allegations for this type of an enforcement case is usually predictable and clear-cut. A PFD for this type of an enforcement case is routinely issued in less than 30 days from the conclusion of the evidentiary hearing. Yet, the testimony in this simple enforcement was as unorthodox, awkward, and complicated as one could imagine. The Administrative Law Judge ("ALJ") spent *over 14 months* considering this simple enforcement action. Some nine (9) months after the conclusion of the evidentiary hearing, the ALJ informed the Executive Director ("ED") that his case jumps around, makes no sense, and arrives at conclusions without providing

the evidence for those conclusions. If one takes the time to review the record of this proceeding, one will not be able to determine which facts are offered in support of particular allegations. If one gets past that hurdle (which one cannot), one will conclude that the facts offered by the ED in no possible way support the far-fetched and over-reaching allegations that are made.

So how is it possible that the ALJ sides with the ED on every issue, except for one? As amazing as it sounds, a review of the PFD reveals that almost every finding made by the ALJ that purports to support the ED's allegations is not based on the evidence offered by the ED in support of that allegation. In essence, the ALJ makes a case for the ED that is entirely different than the case that was actually made by the ED. *More importantly*, even using the ALJ's evidence in support of an allegation, one will see that the ALJ's findings *do not* support the ED's allegations. An example will illustrate this point.

The ED alleges that Respondent violated 30 Texas Administrative Code ("TAC") §335.94 for failure to properly operate a hazardous waste transfer facility because, according to the ED, Respondent had "approximately 400" drums of hazardous waste outside of the main building. The ED alleged that by virtue of the "approximately 400 drums" of hazardous waste, Respondent had to comply with the requirements set forth in the regulation, namely security, contingency and personnel training requirements. Based on the presence of "approximately 400 drums" of hazardous waste outside of the main building, the ED recommends a penalty of $9,000. In support of this allegation, in his direct case, the ED offers the following:

> Q (Roberts): I want to go to the next violation that's listed as – let's see. On the EDPRP it's listed as Number 5C on Page 2 in Exhibit ED-A, which is an allegation that there was improper security personnel training and contingency planning. When you showed up the fist time on June the 9th, what were your initial concerns regarding the security of Envirosol?

> A (Kerlin): Transfer facilities that handle hazardous waste are required to adhere to some additional regulatory requirements; one of them being security of the site,....

Tr. 142-143, Volume 1.

The allegation is that Respondent is a hazardous waste transfer facility and has stored "approximately 400 drums" of hazardous waste outside of the main building, and as a result of these "approximately 400 drums" of hazardous waste, Respondent should pay $9,000. However, the ED makes no attempt whatsoever to prove that allegation. None. Instead, the ED simply states that Respondent is a hazardous waste transfer facility and continues with an explanation of security, personnel training and contingency planning under the rule. The ALJ recommends that the Commission find that Respondent failed to properly operate a hazardous waste transfer facility and agrees with the recommendation of a $9,000 penalty, not based on the ED's testimony related to that allegation, but rather based on testimony that was pieced together by the ALJ from random parts of the proceeding. Even then, the pieced together evidence does not support the ED's allegation, nor the penalty that was based on the ED's allegation.

The ALJ's analysis speaks for itself on this issue. She relies on two pieces of evidence, *neither of which were part of the ED's direct case*, nor offered in support of this particular allegation. The first evidence relied upon by the ALJ is a statement made by the ED's witness on cross-examination, that Respondent "did more things" than store universal waste at the Facility. The fact is that Respondent did in fact do more things than store universal waste at the Facility, but it is uncertain how storing "more things" justifies this particular allegation and the recommended penalty.

The next evidence relied upon by the ALJ is testimony from the ED's witness regarding *four (4) manifests*, out of 307 manifests, indicating that "hazardous waste" was brought to the

facility over a year prior to the investigation. There is no mention by the ED that these four manifests were offered to prove this allegation. Of course, the ED doesn't use this evidence in support of this allegation because these four manifests do not support an allegation that "approximately 400 drums" of hazardous waste were stored at Respondent's facility, and do not support a $9,000 penalty. Without any explanation, the ALJ somehow arrives at the conclusion that a $9,000 penalty, which was based on an allegation by the ED that "approximately 400 drums" of hazardous waste were stored at the facility, is also justified by the virtue of these four manifests. There is no rationale for this conclusion.

Contrary to the ALJ's belief, the ED is not alleging that because four manifests, out of 307 manifests, in a three (3) year span, indicate that hazardous waste was brought to the facility over a year prior to the TCEQ investigation then Respondent is considered a hazardous waste transfer facility for all practical purposes from that point on until the end of time. That is not the ED's allegation by any means. Nor is the ED recommending a $9,000 penalty based on such an allegation. Rather, the ED is making an allegation that "approximately 400 drums" of hazardous waste were outside of Respondent's facility and is recommending a $9,000 penalty based on that particular assertion. A reference to four manifests does not support the ED's allegation, nor does it support a penalty of $9,000.

The theme that the ALJ goes beyond the evidence offered by the ED in support of an allegation, and the fact that her findings do not really support the ED's actual allegation is prevalent throughout the PFD. Furthermore, on a few allegations, the ALJ is wrong as a matter of law. Finally, the ALJ fails to provide an analysis whatsoever in support of the allegation that carries the heaviest fine—the allegation relating to the characterization of 6 waste streams. All of these issues are discussed below.

II.
EXCEPTIONS

A. Unauthorized Discharge of Industrial Solid Waste

The ALJ recommends that the Commission find that Respondent failed to prevent an unauthorized discharge of industrial solid waste and further finds that a penalty of $4,500 is appropriate for this violation. The basis for the ALJ's recommendation is two photographs: Photograph Nos. 6 and 28. These two photographs in fact demonstrate the same area from different angles. The ALJ concludes that these photographs show soil discoloration evidencing the discharge of "industrial solid waste."

The ED spent over an hour at the evidentiary hearing on this issue, introduced into evidence over thirty (30) photographs in an attempt to support this allegation, and pointed to numerous locations in support of its belief that there were discharges. The ED's witness testified that areas where there were distressed vegetation proved that a discharge had occurred. On cross-examination he testified that the lack of vegetation in the areas of concern were quite possibly due to the fact that the subject area was a drainage pathway. On direct-examination, he sees a photograph and concludes that it is evidence of a discharge that is going off-site and entering the waters of the state, yet on cross-examination he sees the same photograph and agrees that it is "entirely possible" that what he is seeing is not evidence of a discharge at all. He testified that discoloration of the concrete inside the building was sufficient proof of a discharge because Respondent did not provide the investigator with "engineering documents" demonstrating that the floor could contain the observed stain on the concrete. He testified that bulging drums were discharges under the law, and further testified that numerous areas showed historical discharges. Based on the testimony of the ED's witness, one would think that the site

was under the danger of exploding at any moment. The witness's curriculum vitae (attached hereto as Attachment "A") gives one a glimpse of the theatrics that accompany this witness.

On cross-examination, the same witness testified that out of 705 drums, he saw a discharge from "somewhere between three and ten" drums. He testified that he relies heavily on photographic evidence yet there are no photographic evidence of these discharging three to ten drums. Even the ALJ, after 14 months of considering the facts of this case, was able to point to *one area* that she concluded evidenced a discharge, which was based entirely on the testimony of the witness that practically saw discharges everywhere at the Respondent's facility.

We offer the above to give the Commission some context. We are not asking the Commission to overturn the ALJ's conclusion because she relied on the testimony of a witness that we believe lacks an ounce of credibility. Rather, our argument is that there is no evidence in the record suggesting that the one discharge, even assuming that it is a discharge, was of an "industrial solid waste" rather than used oil or non-hazardous municipal solid waste.[1] The ED, as well as the ALJ, take for granted that in order to prevail on this issue, there needs to be evidence of a discharge, and also evidence that the discharge was of an "industrial solid waste." Without the latter, all one has is evidence of a discharge. A discharge does not violate §335.4; rather a discharge of "industrial solid waste" violates §335.4. This may appear to be a formality, but such is life at an evidentiary hearing. At an evidentiary hearing, one has to go through the motions of offering evidence in support of an element of an allegation.

Furthermore, this issue is relevant because in his Petition, the ED also alleges a discharge of used oil under §324.4, which carries a base penalty of $2,500, as opposed to $10,000 under the Texas Water Code. *See* Tex. Water Code §7.052. Accordingly, we believe that the ED

[1] Note that the ED alleges a violation of 30 TAC §335.4 (relating to discharges of industrial solid wastes and municipal hazardous wastes), and not a violation of Texas Water Code §26.121.

should provide *some evidence* suggesting that the discharge in the referenced photographs was a discharge of "industrial solid waste" as opposed to used oil. The ED simply failed to partake in this evidentiary exercise This type of evidence can come in many forms. We suggested sampling of the soils to confirm whether the material in the soils is a used oil product or otherwise, but that is by no means an exhaustive list of evidence that can support a finding that the discharge was of an "industrial solid waste."

With all due respect to the ALJ, and even though she may very well be right, her conclusion that because the drum was labeled "Flammable Liquid" and therefore it is an "industrial solid waste" (rather than used oil or non-hazardous municipal solid waste) is not based on evidence that was introduced at the hearing. The ALJ cannot take a leap of faith on a critical element of an allegation.

If the ED did not want to take soil samples to prove its case, then perhaps it could have proven its case otherwise. Here's an example of how the ED could have accomplished this task:

> ED's counsel: Since we are alleging a discharge of "industrial solid waste" pursuant to §335.4, can you give me your opinion as to why the discharge that you saw in Photographs 6 and 28 was from an "industrial solid waste" as opposed to used oil or a non-hazardous municipal solid waste?
>
> ED's witness: Sure, I would be happy to do that. You see, the label says "flammable liquid," and in my opinion, based on the thousands of investigations that I have done, you wouldn't expect to see "used oil" in such a drum. Second, this area did not contain any "used oil" material based on my observations of the site and my discussions with the Respondent, third, the,.....

Any variation of the above could work, but without such evidence, we are left with evidence of a discharge, but not knowing what is being discharged, and we believe that it is inappropriate for the ALJ to fill in the missing blanks from the ED's case. The ED failed to

provide evidence that there was a discharge of an "industrial solid waste" at the facility and the ALJ has no basis to conclude that the discharge was of an "industrial solid waste."

B. Operation of a Hazardous Waste Transfer Facility

The ED has alleged that Respondent operates a "hazardous waste transfer facility" because, according to the ED, Respondent had "approximately 400" drums of hazardous waste outside of the main building. As a result of the presence of the approximately 400 drums of what the ED believes is hazardous waste, he believes that the requirements applicable to hazardous waste transfer facilities apply (namely, security, contingency planning and training requirements) and recommends a penalty of $9,000. The ALJ finds in favor of the ED. The quandary is that the evidence relied upon by the ALJ is not the evidence the ED used to prove this allegation. In fact, the evidence relied upon by the ALJ was not offered by the ED as part of his direct case in support of this allegation, so it is difficult to understand how the ALJ has chosen to connect dots that even the ED was not willing to connect.

Based on testimony that 4 manifests, out of over 307 manifests provided to the ED, showed that hazardous waste entered the facility almost a year prior to the investigation, the ALJ somehow concludes that the ED proved its allegation that Respondent was operating a hazardous waste transfer facility by virtue of having "approximately 400 drums" of hazardous waste at the facility. The 4 manifests referenced by the ALJ do not support the allegation that "approximately 400 drums" of hazardous waste existed at the facility.

If the ED believed that the 4 manifests referenced by the ALJ support this allegation, then he should have alleged that those manifests support the allegation that Respondent was operating a hazardous waste transfer facility. He did not. He alleged that approximately 400 drums of hazardous waste existed at the facility and recommended a penalty *based on that allegation, and not based on the allegation that the existence of four manifests, out of 307 manifests, render the*

entire site a hazardous waste facility. Had the ED alleged that the four manifests are what it is relying upon to conclude that the site is operating as a hazardous waste transfer facility, then Respondent would build its case to discuss the fate of the material referenced in those manifests. Furthermore, had the ED alleged that the manifests referenced by the ALJ supported the allegation that Respondent was operating a hazardous waste transfer facility, or provided any testimony to this affect in support of this allegation, then Respondent would have put evidence in the record suggesting that some of these manifests were in fact "universal waste" despite the fact that they were not coded as such. Respondent did not offer such evidence because neither the allegation, nor the testimony offered at the evidentiary hearing in support of this allegation were based on the 4 manifests.

Despite the ALJ's beliefs, the ED did not rely on the four manifests to make this allegation, and it is no coincidence that he did not offer this testimony in support of this allegation. Rather, the ED believed that this rule is triggered by virtue of the fact that Respondent stored, on one occasion, paint and paint-related waste for over one year. The ED's position is supported by the evidence in the record, and is precisely why the ED stated that "approximately 400 drums" of hazardous waste were at the facility. The "approximately 400 drums" can be correlated with the volume of *universal waste* brought to the facility. The ED believes that once the one year threshold for storage of universal waste is crossed, then Respondent is in violation of every rule pertaining to the regulation of hazardous waste. That is the basis of the ED's allegation, and not the 4 manifests as suggested by the ALJ.

The notion that if one exceeds the one year threshold applicable to storage of universal waste then one has to comply with each and every requirement applicable to hazardous waste sites does not exist in the law. In fact, the ALJ agrees that such a notion does not exist. *See* 40

CFR §273.35(a); *see also* ALJ's PFD, P. 28 "The Judge observes that nowhere in 40 CFR 273.35(a) does it read that universal waste accumulated for longer than one year immediately becomes regulated industrial hazardous waste."

The evidence relied upon by the ALJ does not support the actual allegation made by the ED. In fact, even if one concludes that the 4 manifests rendered this site a hazardous transfer facility, there is no evidence in the record that the presence of hazardous waste at the facility based on the four manifests justifies a penalty of $9,000. This is so because the $9,000 penalty is based on the allegation of the existence of "approximately 400" drums of hazardous waste at the site and not based on the contents of the four manifests (which would amount to less than three drums of hazardous waste).

C. Records of Waste Activities

The ED alleges that Respondent failed to keep records of waste activities regarding the type, amounts, location, and disposition of wastes generated and stored at the Facility. If the ED or the ALJ could tell us to what wastes the ED is referring, or what information is missing from the documents provided to the ED, then we would gladly offer a response and a defense. Sitting here today, over three years after the investigation, and over fourteen (14) months after the evidentiary hearing, nobody, including the ALJ, will be able to explain to the Commission the basis of this allegation.

We will repeat and stand by what we said in our closing arguments: "The Executive Director opted to not offer any direct testimony on this allegation. On cross-examination, Mr. Kerlin was asked the question of to which wastes this allegation related. His response: 'As before, I do not know." Tr. 96(6-22), Volume 2.

The ALJ states that "Contrary to his assertion that he only handled paint and paint-related waste (universal waste) and Class II oily waste water, Respondent also handled hazardous waste,

as discussed above." She then refers to the testimony of Mr. Kerlin regarding a manifest on Bates Stamp pages 67 and 70 of Exhibit ED-5.

The ALJ once again relies on the waste referenced in the four manifests (discussed above) to side with the ED's position. While the ALJ believes that this allegation somehow relates to the wastes referenced in those four manifests, we do not know that, as the ED *not once* made such a statement in the evidentiary hearing. If the ED believed that the waste referenced in the four manifests are the basis of this allegation, then we believe that Respondent should be notified of that assertion. There is something to be said about making an allegation and then providing facts in support of that allegation. Had the ED made such a statement in support of this allegation, Respondent would have made an argument that §335.9 is inapplicable to these waste streams. Respondent cannot just make assumptions about the ED's allegations and then provide a defense regarding an allegation that has not really been made.

With regards to the ALJ's references to the testimony of Mr. Kerlin on the manifests contained in Page 67 of ED-5, we note that the waste listed on Page 67 of ED-5 is a paint and paint-related waste, a form of universal waste. *See* p. 67, ED-5. This fact is undisputed. The recordkeeping requirements of §335.9(a)(1) *do not* apply to this waste stream. Therefore, the ALJ's reliance on this testimony to support this allegation is wrong as a matter of law.

As for the ALJ's reliance on Page 70 of ED-5 to support this allegation: the issue here is that in the particular manifest, Respondent inserted the generator's name and the city in which the facility is located, but he did not include the mailing address of the generator. This omission appears in one (1) manifest out of 307 manifests provided to the ED, or 0.003% of the manifests. The inspector testifies that he could "probably" locate the facility, but from a "strict regulatory standpoint" this manifest is deficient. First, there is no "probably" to it, he can absolutely find

the facility. Second, to what regulation is the inspector referring? If he is referring to §335.9(a), as the ALJ seems to indicate given that she is relying on this testimony in support of an allegation that §335.9 has been violated, we would like to know where in §335.9(a) does this requirement appear. Where in §335.9(a) does it state that the manifest of a Class II waste must contain the mailing address of the generator? It does not. Because the ED's case is so incoherent, the ALJ is mixing two separate issues. Recordkeeping requirements under §335.9 is a separate issue than manifesting of waste (there is a separate allegation about manifesting of waste). The lack of inclusion of a mailing address in a manifest does not support a violation of §335.9. In fact, Class II waste does not even need to be manifested.

The ALJ's reliance on the four manifests, and pages 67 and 70 of ED-5 to support this allegation is entirely misplaced. As before, the ED did not even rely on these pieces of evidence to support this allegation.

D. Manifesting Requirements

The manifesting requirements of §335.14(a) and (b) apply to Class I wastes as well as hazardous wastes. This requirement does not apply to universal wastes, Class II wastes or any other type of waste. It is true that Respondent did not have all of his manifests at the site at the time of the inspection. That is a fact. Some of the manifests were at the facility, some were located in Respondent's vehicle (which were incidentally located at the site, and the inspector was notified of that fact but was disinterested in reviewing those manifests), and the remainder were at Respondent's home office. Immediately after the investigation, all manifests were submitted to the inspector at the TCEQ Regional Office.

In order to prevail on this issue, the ED has to show that Respondent generated hazardous waste and Class I waste, and the manifests for *those particular wastes* were not located at the facility at the time of the inspection, since the requirements of §335.14(a) and (b) apply only to

Class I wastes and hazardous wastes—universal wastes are not subject to this requirement. That is the only way that the ED can prove that Respondent violated this allegation.

Respondent does not generate Class I waste and there is no such allegation. The ALJ once again states that Respondent generated hazardous wastes. We assume that she is once again referring to the 4 manifests noted above. For the purposes of this discussion, let us assume that those manifests are truly manifests of hazardous waste. In order for the ED to prevail, he must prove that those particular manifests of hazardous wastes were not at the facility at the time of the inspection. If those manifests were at the facility at the time of the investigation, then the ED's allegation cannot stand. The inspector testified, and the ALJ notes in her PFD, that "some but not all" manifests were presented to the inspector. The question is whether these 4 manifests were located on-site and were presented to the inspector at the time of the inspection or not. The ALJ has no way of knowing the answer to that question because the ED did not go through the evidentiary exercise that could prove this allegation. If the four manifests referenced by the ALJ were not located at the facility at the time of the inspection but later sent to the inspector, then it would be correct to side with the ED, as that proves that manifests of hazardous wastes were located off-site in violation of this rule. However, we do not know the answer to that question as no such evidence was offered. Without this evidence, it is *impossible* for the ALJ to conclude that the ED proved this allegation.

E. Land Disposal Restriction (LDR) Requirements

The ED alleges that Respondent failed to provide LDR documentation for waste stored at the facility. 40 CFR 268.7(a)(1) states, in relevant part, that a "generator of hazardous waste must determine if the waste has to be treated before it can be land disposed." We are once again unsure as to what hazardous waste the ED is referring. The following exchange between the ED's counsel and Mr. Kerlin speaks volumes about the basis for this allegation:

Q.(Roberts): What wastes did you see while you were there that would qualify that would need land disposal documentation before it left the facility? What was there that didn't have it but should have according to—

A.(Kerlin): At the time of my investigation, I was actually unable to determine what wastes at the facility would require land disposal restriction documentation.

Q. Would the 10-day if it was there for 10 days?

A. No.

Q. What if it had been there for less than a year? I'm sorry. If paint-related universal waste had been there for less than a year?

A. Does not require it.

Q. If it had been there for more than a year?

A. Because the universal waste greater than a year would have become fully regulated as a hazardous waste, when that waste was shipped offsite for disposal, it would have required land disposal restrictions.

Tr. 148(20)-149(13), Volume 1.

It is clear that the basis of this allegation is the ED's conclusion that universal waste that is accumulated greater than one year immediately becomes regulated industrial hazardous waste and every requirement applicable to hazardous wastes would apply to such universal waste. Again, there is no such notion in the law, and the ALJ agrees with Respondent on this issue. However, without any explanation, the ALJ makes a finding that supports the ED, but the basis of her finding is based on an entirely different theory than the ED's theory.

Contrary to the ED, the ALJ does not conclude that this regulation was violated by virtue of the one year exceedence. Rather, the ALJ concludes that the *accidental discharge* of waste at Respondent's own facility, as evidenced by photographic evidence, triggers the LDR

requirements. To arrive at this conclusion, the ALJ must have first concluded that the discharges at the facility were of industrial hazardous waste and not universal waste, as the LDR requirements do not apply to universal wastes.[2] Next, the ALJ must have concluded that the LDR requirements apply to accidental discharges as a matter of law. This point cannot be stressed enough: even the ED did not make such an allegation.

Regardless, there is no possible way that the ALJ can conclude based on her review of some photographs that the discharge at Respondent's facility was a discharge of "hazardous waste" as opposed to universal waste. This is so because there is no evidence in the record suggesting that the discharges at the facility were of a "hazardous waste" other than universal waste.

Furthermore, the ALJ's conclusion is wrong as a matter of law because the LDR requirements do not apply to accidental discharges at one's own facility. The notion that one is required to have LDR documentation due to the fact that he may have an accidental discharge is incorrect as a matter of law. A brief of the LDR requirements is beyond the scope of these exceptions and really unnecessary because such a reading of the law is not suggested by the ED.

The ALJ has no evidence to point to in support of her position that the discharges in the photographic evidence were discharges of "hazardous wastes," and her position regarding the applicability of the LDR requirements is wrong as a matter of law. Most importantly, her basis in arriving at her conclusion is not one that is alleged by the ED. It is truly distressing how the ALJ continuously finds ways to place dots that the ED has not placed and then manage to somehow connect the dots.

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[2] Q (Abazari) And your understanding that the land disposal restrictions apply to universal waste is based on what?

A (Kerlin) No, sir. They do not apply to universal waste. They apply only to hazardous waste.

Tr. 193(21-24), Volume 1.

F. Hazardous Waste Determination

The regulations provide that a generator of solid waste must determine whether the waste is hazardous or not, and if the waste is a non-hazardous industrial solid waste, he must then classify the waste as either a Class 1, 2 or 3 waste pursuant to the requirements of 30 TAC Chapter 335, Subchapter R. 30 TAC §335.62. Thus, for each waste that is generated, a person must first perform a hazardous waste determination, and then classify the waste if it is a non-hazardous industrial solid waste.

The ED alleges that Respondent generated six (6) waste streams as follows:

- Universal Waste accumulated for less than one year
- Universal Waste accumulated for greater than one year
- Hazardous and Non-hazardous wastes transported to and stored at the site for more than 10 days
- Industrial and Hazardous recyclable material transported to the site and stored for greater than 24 hours
- Hazardous and non-hazardous wastes generated from on-site activities; and
- Waste determination on the contents of the 1,600 gallon tank

Each supposed waste stream identified by the ED carries a $5,000 base penalty. Because Respondent is categorized as a "high performer" under the compliance history regulations, there is a 10% discount. Thus, this allegation accounts for over half of the penalties recommended by the ED, or $27,000 [(6 x $5,000) – 10%]. The ALJ agrees with the ED and concludes that Respondent failed to characterize the six (6) waste streams identified above, and recommends a penalty of $27,000.

In support of her conclusion, the ALJ states as follows:

> Mr. Kerlin testified that it was impossible to verify the classification assigned by Respondent to the Facility's waste because he could not correlate any of the documentation with any specific drum of waste. In addition to being unable to correlate specific records with any specific waste or waste stream, Mr. Kerlin noted several instances in which Respondent improperly classified wastes. For these reasons, the Judge recommends the Commission find that Respondent failed to conduct adequate hazardous waste determinations on the wastes generated and stored."[3]

We are uncertain how the statement above supports the allegation that 6 waste streams were generated by Respondent. Regardless, the list provided by the ED is not a list of waste streams at all. It is a list of concepts under waste regulations. The allegation itself is improper as it does not tell Respondent to what wastes the ED is referring.

Despite the fact that there is nothing in the record that can possibly substantiate the list provided by the ED,[4] nor is there anything in the ALJ's analysis explaining how she concluded that there were six (6) waste streams, we will go through these items in an effort to show that there is no evidence in support of these "waste streams" and furthermore such a listing of waste concepts makes no sense whatsoever when discussing waste characterization.

- The listing of universal waste accumulated for less than one (1) year and universal waste accumulated for greater than one (1) year *as two separate waste streams* makes no sense. By definition, universal waste is a hazardous waste regardless of

[3] The ALJ also notes that "The record shows Respondent shipped hazardous industrial waste to entities such as TXI. Because hazardous industrial waste is, by definition, industrial solid waste, Respondent was a generator of solid waste." We assume the ALJ is making this statement to arrive at the conclusion that Respondent is a generator of solid waste. We do not dispute that fact. Respondent is a generator of solid waste because he possesses industrial solid waste to be shipped to another person, regardless of whether it is TXI or another entity. However, the ALJ is wrong in her statement that hazardous waste was shipped to TXI. The record is clear on this issue. Only universal waste was shipped to TXI.

[4] We implore the Commission to review the ED's Closing Arguments on this issue. One would think and hope that in support of an allegation of the fact that Respondent failed to characterize six waste streams, the ED would set forth evidence in support of its allegation. Instead of doing that, the ED discusses the "paradox of no documentation," certain mischaracterized manifests, and "inability to conclusively categorize or identify the contents of a 1,600 gallon tank. We are truly unsure how any of this justifies the allegation of the listed 6 waste streams.

whether it is there for less than one (1) year or over one (1) year. It is a hazardous waste. The one year threshold has no relevance whatsoever as it relates to waste characterization. The ALJ offers no analysis as to how or why this is two separate allegations.

- The ED then lists "hazardous and non-hazardous wastes transported to and stored at the site for more than 10 days." To what waste is the ED referring? Neither Respondent, the ED, nor the ALJ know the answer to this question. The ALJ's analysis does not (and frankly, cannot) include a discussion of the evidence that supports this allegation. Furthermore, we are unsure how the ten day requirement even correlates to an allegation of waste characterization.
- The ED next identifies industrial and hazardous recyclable material transported to the site and stored for greater than 24 hours as a waste stream. To what waste is the ED referring? Is this waste stream something different than the waste stream identified above (or below)? Neither Respondent, the ED, nor the ALJ know the answer to these questions.[5] The ALJ's analysis does not include a discussion of how she arrived at the conclusion that this allegation is supported by the evidence.
- Next, the ED lists "hazardous and non-hazardous wastes generated from on-site activities" as wastes that required classification. Is this waste stream something other than the above categorizations? If so, what are these wastes? Nobody will be able to provide the Commission with answers to these questions. We challenge the ED or the ALJ to tell us to what wastes this allegation relates. Certainly, there are no wastes that fit within this category that do not fit within one of the other categories. We challenge the ED and the ALJ to explain to the Commission what wastes fall within this category that have not fallen in the prior listings. There is no analysis provided by the ALJ in support of her conclusion that this allegation was proved by the ED.
- Finally, the Executive Director lists the content of the 1,600 gallon tank as a waste that needed to be characterized. This waste was classified as Class II waste and documented as such.

The list noted above is not a proper allegation of waste streams. There is no evidence in the record that supports the identification of six (6) waste streams. The ALJ concurs with the ED that there were six (6) waste streams, and provides as follows:

> The ED points out Mr. Kerlin explained the rationale behind his determination that the Facility managed six waste streams. He

[5] In support of this allegation, Mr. Kerlin testifies that he has "no real evidence other than verbal the statements by the operator that they did solvent distillation at the site." Tr. 77(21-23), Volume 2. Solvent distillation was done long before the investigation. In fact, Mr. Kerlin admitted that there was no recycling units at the site during his investigation, and he did not identify any solvent distillation waste during his investigation. *See* Tr. 140(17-18). Mr. Kerlin also states that his other evidence in support of this allegation is the "1,600-gallon tank that contained spent solvent or used solvent from distillation activities." Tr. 77(23)-78(1), Volume 2. The 1,600 gallon tank did not contain spent solvents. It contained oily water. A waste that Respondent classified as Class II waste based on process knowledge. *Regardless, this is listed as a separate waste stream by Mr. Kerlin, so his attempt to use the same evidence to list two different waste streams is disingenuous.*

> stated that, generally, when he investigates a facility, he looks at the specific wastes they generate. However, because he had no real documentation regarding the wastes at Respondent's Facility, he "had to revert to somewhat broad classifications" based on "case and regulatory background." The ED argues that, because Respondent failed to rebut the statutory assumptions made by Mr. Kerlin under the "stringent assumption" rule regarding the type, amount, and storage chronology of wasted located at the Facility, his determination there were six waste streams at the Facility is reasonable and proper. The Judge concurs.

PFD at 48.

We do not really know what that means, but do know that the above statement in no way justifies a finding of six waste streams. The ALJ's statement does not answer the question of why universal waste stored for over a year and under a year are considered two separate waste streams. It does not answer the question of to what waste the ED is referring when referencing the 10 day requirement and the 24-hour requirement. It does not answer the question of what waste generated by Respondent falls within the 24-hour requirement. It does not answer the question of whether the identification of "hazardous and non-hazardous wastes generated from on-site activities" is a waste that is different than the waste that the ED and ALJ believe are subject to the 10-day or 24-hour requirement. The statement that Respondent had "no real documentation" regarding the wastes at the site is outrageous and part of the theatrics of the ED's case. Regardless, we do not see the correlation between "no real documentation" and six waste streams. Why not ten waste streams, or fifty, or "approximately 400"?

Finally, the ALJ's reliance on the "stringent assumption" rule in support of her finding is peculiar. The phrase "stringent assumption" rule in reference to 30 TAC §335.512(a) was introduced by the ED in his closing arguments as the provision that saves it from all his troubles of actually proving his case. Section 335.512(a) does not stand for the proposition that the ED, and now the ALJ, are advocating, which is presumably that the ED can make broad allegations

with respect to waste generation, fail to prove the allegations at an evidentiary hearing, yet still prevail based on reliance on this regulation. It is not surprising that in his struggles to prove this allegation, the ED threw out this inapplicable regulation to support his theory in the 11th hour (this theory was offered up by the ED in his Response to Respondent's Closing Arguments), but it is surprising that the ALJ found this theory to have any credibility. This regulation in no way is applicable to the issue at hand. Section 335.512(a) provides as follows:

> The executive director may review the generator's classification of any waste to determine if it is appropriately classified. If the executive director determines that a waste has been classified incorrectly according to the standards set forth in this subchapter, or if the executive director determines that extenuating circumstances that may result in threat of harm to human health or the environment warrant an upgrading of the classification, the executive director may reclassify the waste to the more stringently regulated classification. The executive director shall provide the generator with written notice of his determination and reclassification.

30 TAC §335.512(a).

Since waste characterization is the responsibility of the generator, this regulation allows the ED to disagree with a generator with respect to his characterization of a waste stream and in fact *reclassify* a waste to a more stringent standard. For example, if a generator believes that his waste is a Class II waste, by virtue of this regulation, the ED can reclassify the waste after determining that a Class I characterization is justified and also upon giving proper notice to the respondent. The ALJ's reliance on this regulation to support the ED is puzzling.

Below is the evidence offered by the ED in support of the allegation that Respondent failed to characterize six waste streams and a recommendation of a $27,000 penalty. This evidence needs to explanation, no analysis, or any discussion.

> Q.(Abazari): You cleared up what the term generation means for Ms. Roberts, but I have to tell you that I don't understand what you're saying in terms of what

wastes were generated, in your opinion, at this facility. What wastes were generated at this facility?

A(Kerlin): The bottom line is that the only waste that I know for sure that was generated under the regulatory definition is universal waste accumulated for greater than a year and transfer facility waste accumulated for greater than 10 days. I actually have no real knowledge that the facility itself in their daily activities generated waste, but I suspect it did.

Q. And with respect to the transfer facility with greater than 10 days, if it was universal waste, would the ten-day requirement still apply?

A. No, sir.

Tr. 122 (5-20), Volume 2.

******

Q(Abazari) ...Sitting here today, sir, can you tell me how many wastes were generated at this facility?

A(Kerlin) No. That is why this violation is structured in this manner.

Of course, the "structuring" of a violation in this manner is a good fishing expedition, but it is not an appropriate allegation in an enforcement action, as it does not convey to a respondent to what wastes the ED is referring, thus leaving the respondent absolutely defenseless.

There is no evidence in the record that supports the ED's allegations and the ALJ offers no analysis in support of her position.

G. Authorization to Store Hazardous Waste and Shipment of Waste to Unauthorized Facility

1. Authorization to Store Hazardous Waste

The ED alleges that Respondent needed a permit pursuant to §335.2(a) and (b) because (1) the one year time frame for storing universal waste was exceeded, and (2) "waste from the 1,600 gallon tank had been shipped to Effluent Recycling, which was not authorized to accept waste."

The ALJ recommends that the Commission find that Respondent failed to obtain authorization to store hazardous waste and failed to prevent the shipment of waste to an unauthorized facility. In support of her finding, and consistent with her previous findings, the ALJ goes beyond what the ED alleges. While the ED is alleging that a permit is required because the timeframe for the universal waste is exceeded and that wastes were sent to an unauthorized facility, the ALJ first takes a different route and goes through some manifests (oily wash water/cutting fluid from LX3 Tooling; oily water and coolant from American Ironhorse Motorcycle Company; adhesive material from Applied Aerodynamics; oily wash water from Kitchen Cabinets; anti-freeze from Wood's Paint and Body; and acetone from Questech) and concludes that these manifests show that Respondent was in possession of "industrial solid waste" and that a permit would be required for the storage, processing, or disposal of this "industrial solid waste." It is unclear how the ALJ has concluded that such wastes are "industrial solid wastes." Even the inspector states that he does not know whether these wastes were industrial solid wastes. *See* Tr. 45-46, Volume 2. Second, the ALJ overlooks the regulations in Chapter 324 relating to used oil handlers. No permit is required for such material and the ED agrees with Respondent on this issue. Only a registration is required, and Respondent is registered with the Commission.

Next, the ALJ addresses the one year exceedence issue associated with universal waste. The ED's position is that because Respondent had universal waste beyond one year then a permit would be required. The ALJ agrees and states as follows:

> "Federal Regulation 273.35(b) permits a large quantity handler of universal waste to accumulate universal waste for longer than one year from the date the universal waste is generated or received from another handler if the activity is "solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal." Respondent asserts he accumulated the universal waste for longer than one year to facilitate proper disposal. However, the facts surrounding his failure to dispose of the paint and paint-related waste at his Facility in less than one year, both before and after his car accident, fail to demonstrate he accumulated universal waste for longer than one year to facilitate proper disposal. Because Respondent allowed the universal waste (paint and paint-related waste) at his Facility to accumulate for longer than one year from the date it was generated or received, that universal waste became fully regulated as hazardous waste.

We would like to make two points regarding the ALJ's statement. First, the ALJ makes no mention of the efforts made by Respondent to dispose of the material prior to the one year deadline. We believe these efforts show that Respondent attempted to dispose of the material prior to the one year deadline, but the recipient of the waste, TXI, did not want to take the wastes at that particular point in time.[6] Respondent testified that this had happened to him in the past and although the waste may not be wanted at a particular point in time, the hold-up is usually for

[6] The facts are these: Respondent accumulated paint and paint-related waste for greater than one year. The exceedence was by less than 60 days. Only paint and paint related waste received after May 18, 2004 through July 14, 2004 exceeded the one year accumulation period. A review of the shipping documents (something that Mr. Kerlin failed to do) will reveal that only a small portion of the waste exceeded the one year requirement. Respondent further testified that he had contacted TXI prior to the one year due date (in late April 2005 to early May 2005) to arrange for disposal, but he was informed by TXI representatives that "they weren't receiving any waste into the facility." Tr. 195(16-19), Volume 2. Respondent called TXI again in May 2005 and arranged for the disposal of the material. Tr. 196(10-15), Volume 2. TXI scheduled to pick up the material in June 2005. Tr. 196(19-21), Volume 2. That pickup never occurred because Respondent was injured in a car accident which prevented him to be present at the site. Accordingly, he cancelled that pickup. Tr. 197(1-6), Volume 2. This scenario clearly fits within the exception provided in 40 CFR §273.35(b). Respondent has met its burden on 40 CFR §273.35(b) and the Executive Director does not offer any testimony as to why the exception does not apply in this case.

a "couple of weeks." Tr. 195-196, Volume 2. Thus it made sense for Respondent to hold on to the universal waste until it was accepted by TXI rather than finding another customer across state lines or hundreds of miles away. This clearly fits within the "facilitate proper disposal" exception. The ALJ may disagree on this issue, but her analysis makes no mention of this testimony to the point that one wonders whether she recalls this testimony. If the ALJ disagrees with Respondent that this testimony supports the exception, then she should discuss this fact in her analysis. No such analysis is provided.

Second, in this part of her analysis the ALJ concludes that because the universal waste was at Respondent's facility for over a year "then that universal waste became fully regulated as hazardous waste." PFD at 43. However, the ALJ had previously stated otherwise, as follows:

> The Judge observes that nowhere in 40 CFR §273.35(a) does it read that universal waste accumulated for longer than one year immediately becomes regulated industrial hazardous waste. Indeed, §273.35(a) provides for no consequence whatsoever for a large quantity handler of universal waste who accumulates universal waste for longer than one year. The regulation only states that a large quantity handler of universal waste may accumulate universal waste for no longer than one year.

PFD at 28.

In one part of her analysis, the exceedence of the one year requirement for universal waste storage subjects that waste to be "fully regulated as a hazardous waste" yet in another part of her analysis she states that nowhere does it say that universal waste accumulated for longer than one year becomes regulated hazardous waste and she goes on to say there are no consequences for such an exceedence.[7] The ALJ's statements are inconsistent. There is no such

[7] We disagree with the ALJ's statement that there are no consequences for such an exceedence. There is a consequence—if one exceeds the one year requirement then one has violated that provision of the law and can be penalized for such violation. That is a consequence of violating the one year requirement.

notion in the law that universal waste that is accumulated for longer than one year triggers hazardous waste requirement, including the need to get a hazardous waste permit.

The ALJ is wrong as a matter of law in her conclusion that a universal waste handler would have to get a hazardous waste permit when he exceeds the one-year storage requirement. In fact, the ALJ had previously noted that the ED had not proven that such an exceedence necessarily triggers hazardous waste requirements.

2. Shipment of Waste to Unauthorized Facility

The ALJ misstates the ED's position on this issue. 30 TAC §335.2(b) prohibits a generator, transporter, owner or operator of a facility to store, process or dispose of its waste at an unauthorized facility. The ED has alleged that "waste from the 1,600 gallon tank had been shipped to Effluent Recycling, which was not authorized to accept waste." In the Investigation Report (Exh. ED-3), it is stated that on July 11, 2005, Respondent shipped oily water to Effluent Recycling, Ranger, Texas. In his Investigation Report, Mr. Kerlin further states: "Review of information on Effluent Recycling indicates that the site is presently under enforcement, and not authorized to receive unprofiled wastes." The requirement for the profiling of the waste is a requirement that is set forth in an enforcement action against Effluent Recycling. This is a critical point: the profiling requirement is not set forth in regulation and is not a requirement that is imposed on Respondent, rather, it is set forth in an enforcement action against Effluent Recycling and it is that entity's obligation to comply with that requirement. Mr. Kerlin explains, "as part of their ongoing enforcement action they were imposed to where they were required to profile any wastes being received at the site." Tr. 86(2-8), Volume 2. Contrary to the ALJ's understanding, the ED is arguing that Effluent Recycling became an "unauthorized facility" by virtue of the fact that it did not comply with the requirement set forth in its enforcement action. This position is entirely different than that espoused by the ALJ.

Mr. Kerlin is asked the following question: what has Respondent violated if Effluent Recycling did not "profile" the waste in accordance with the enforcement order to which Mr. Kerlin was referring. Tr. 86(9-15), Volume 2. Mr. Kerlin's response: "Regrettably, you as the sender have not verified that you fulfilled all the obligations required by that facility. And unfortunately, that made that waste unauthorized. You did not verify that that place could take what you sent them." Tr. 86(16-20). Effluent Recycling was authorized to accept the waste sent to it by Respondent. The issue is whether Effluent Recycling's failure to "profile" the waste that it received from Respondent, renders it as an "unauthorized facility." The answer is "no." The failure of Effluent Recycling to profile its waste pursuant to an enforcement order (that is not in the record and one which we have not seen), may render Effluent Recycling in violation of the particular ordering provision of the enforcement order, but it does not impact Respondent, *nor does it render Effluent Recycling as an "unauthorized facility."* It simply brings Effluent Recycling in violation of its enforcement order.

Respondent has no obligation to police the situation to ensure that Effluent Recycling is in compliance with presumably every known regulation applicable to it or all of the ordering provisions of an enforcement order.[8] The fact is that Effluent Recycling is authorized to accept the waste that it received from Respondent. The fact that Effluent Recycling failed to perform a function under an enforcement order applicable to it does not change its status as an authorized facility. There is no evidence in the record suggesting that Effluent Recycling was an unauthorized facility.

[8] It is mysterious what the ED believes should be done by Respondent in such a situation. What if Effluent Recycling had profiled Respondent's waste but had not profiled a waste that it received from another entity? Would that fact render Effluent Recycling an "unauthorized" facility in the eyes of Respondent?

III.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Respondent respectfully prays that the Commissioners of the TCEQ find that Respondent did not violate 30 TAC §§335.4, 335.62, 335.94(a), 335.2(a), 335.431(a), 335.9(a)(1) and 335.14(a). Respondent further prays that the Commission dismiss this enforcement action, as the only violations that were proven at the evidentiary hearing do not justify a formal enforcement action pursuant to the Enforcement Initiation Criteria.

Respectfully submitted,

JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Telephone: (512) 236-2000
Facsimile: (512) 391-2197

By: _____
Ali Abazari
State Bar Number 00796094

ATTORNEYS FOR JOE McHANEY AND ENVIROSOL ENVIRONMENTAL SERVICES

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of January, 2009, a true and correct copy of the foregoing document was forwarded to the party listed below in the manner indicated.

Hon. Carol Wood
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701

Hand Delivery

Lena Roberts
Litigation Division – MC 175
Texas Commission on Environmental Quality
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Austin, Texas 78753

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Blas Coy
Office of Public Interest Counsel – MC 103
Texas Commission on Environmental Quality
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Office of the Chief Clerk MC-105
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F
Austin, Texas 78753

Hand Delivery

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 JAN -5 PM 4:16
CHIEF CLERKS OFFICE

Ali Abazari

Attachment A

MANAGERIAL SAFETY DATA SHEET

EXHIBIT
tabbies
ED-1

I. PRODUCT IDENTIFICATION

Product Name:

Jim J. Kerlin
5109 Malinda Lane S.
Fort Worth, TX 76112
Hm: (817) 446-4486
Wk: (817) 588-5894

Purpose and Goal: Technically challenging, mixed program management with field-oriented working environment. High volume, wide variety and flexibility preferred to constant flow and extreme detail.

II. INGREDIENTS

Education: (undergraduate GPA 3.25)
B.S. Chemistry, Southeastern Ok. St. Univ. 5/85
Minors: Biology, Music, Russian Language
Additional study: Geology, German Language

Employment:
September, 2004-Present
Senior Solid Waste Team Field Investigator,
Texas Commission on Environmental Quality Region 4
2309 Gravel Drive, Fort Worth, Texas 75118
Supervisor: Sam Barrett, Waste Program Manager

March, 1998 – September 2004
Emergency Response Coordinator, Senior Solid Waste Team Field Investigator, Special Projects Investigator
Texas Commission on Environmental Quality Region 4
Fort Worth, Texas
Supervisor: Sam Barrett, Waste Section Manager

June, 1996 - March, 1998
Team Leader, Industrial & Hazardous Waste Team
Texas Natural Resource Conservation Commission Region 4
Arlington, Texas
Supervisor: Sam Barrett, Waste Program Manager

January, 1992-June, 1996
Field Investigator, I&HW Team
Texas Natural Resource Conservation Commission Region 4
Duncanville, Texas
Supervisor: Sam Barrett, Waste Program Manager

Prior to January, 1992:
Texas Water Commission/TCEQ Austin Central Office and Region 4 Office, Duncanville, Texas
Other employment and educational information on request.

III. PHYSICAL DATA

age: 44 birth date: 8/29/63
ht/wt: 73", 195lbs
Solubility: non-miscible
Stability: stable, predictable and reliable reaction with other working elements. Highly "team oriented".
Other: Non-smoker; corrective lenses.

IV. REACTIVITY, FIRE AND EXPLOSION DATA

Flash Point: Not applicable.
Shock Sensitivity: Avoid severe physical trauma.
Extinguishing Media: None known.
Affinities: Extensive PC experience in Windows, Novell Office, MSOffice, Network environment. PDA experience.
Aversions: Office-only environment. Neckties.

THE INFORMATION CONTAINED HEREIN IS BASED ON DATA CONSIDERED TO BE ACCURATE.

V. HEALTH TRAINING AND HAZARD EXPERIENCE DATA

Health and Occupational Safety:
40-Hour Certification, HAZWOPR, Texas A&M, 11/91
8-Hour Refresher status: Current thru 6/07
29 CFR 1910.120 physical current thru 5/07
Other Certifications:
Senior I&HW Inspector, TCEQ
Senior Emergency Response Investigator, TCEQ
Municipal Solid Waste Investigator, TCEQ
IS 700 (NIMS), TCEQ 10/04
Hazardous Waste Inspector, USEPA
Groundwater Investigations, USEPA, TCEQ
Continuous Emissions Monitoring, USEPA
Monitoring of Hazardous Air Constituents, USEPA
Basic Surface Water (PWS) Operations, TCEQ
TSCA/PCB Investigations, USEPA
Management Development Course, Texas Governor's Center for Management Development, State of Texas
Incident Command System, TNRCC 11/94
Approx. twenty (20) other trainings/certifications; certificates available on request.

PRECAUTIONARY MEASURES - ADDITIONAL CAREER INFORMATION

Military: United States Army Reserve (Retired)
Rank, Branch: Captain, Military Intelligence
Retired February 1, 2002
Military Biography available on request.

VII. FIRST AID

See "HAZARD EXPERIENCE"

VIII. DISPOSAL AND HAZARDOUS WASTE HANDLING

Knowledge application and areas of expertise:
40 CFR 260-266, 268, 273, 279 (RCRA), 761 (TSCA)
30 TAC Chapter 335 (Texas Ind. & Hazardous Waste Mgmt.),
30 TAC 327 (Spill Prevention and Control)
30 TAC 330 (Texas Municipal Solid Waste)
Texas Water Code Chapter 26
Texas Health and Safety Code Chapter 361
TCEQ Region 4 Emergency Response Coordinator 1994-2004
Technical Assistant, TCEQ Emergency Response Strike Team, 2004-2006
Field _hands on_ application:
Investigation of production and waste management processes and equipment; Conduct and oversight of hundreds of Field Investigations.
Sampling of hazardous and non-hazardous soils, wastes and other media; interpretation of results.
Participation in and oversight of thousands of Emergency Response Incidents. Natural disaster responses included hurricanes Katrina and Rita.
Review of Assessment and Remediation Plans (all levels)
Development, supervision and public presentation of Environmental, Regulatory and Intelligence training material.
Administrative Experience including Budget, Personnel and Equipment Management.

IX. TRANSPORTATION DATA

Proper Shipping: Transporter investigation and oversight experience, including 49 CFR shipping requirements.

X. REFERENCES

On request

XI. OTHER INFORMATION

Awards: TCEQ Employee of the Year, 2002
EPA/TCEQ Strategic Partnership Award, 2003/2005