

**SOAH DOCKET NO. 582-14-2722  
TCEQ DOCKET NO. 2013-1279-IHW-E**

**EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
Petitioner**

**V.**

**RUCKER ENVIRONMENTAL  
SERVICES, LLC; RN105976013  
Respondents**

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**BEFORE THE**

**STATE OFFICE OF**

**ADMINISTRATIVE HEARINGS**

**THE EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE ALJ'S PROPOSED ORDER**

TO THE HONORABLE ELIZABETH DREWS AND THE HONORABLE WILLIAM G. NEWCHURCH:

Pursuant to 30 TEX. ADMIN. CODE § 80.257, the Executive Director ("ED") of the Texas Commission on Environmental Quality, having reviewed Administrative Law Judge ("ALJ") Newchurch's Proposal for Decision ("PFD") and Proposed Order for the above-referenced matter, respectfully files the following exceptions to the Proposed Order:<sup>1</sup>

1. The ED respectfully recommends three changes to Finding of Fact No. 2.c.:
  - a. First, the ED recommends that the ALJ include a footnote to clarify that the substantive provisions of 30 TEX. ADMIN. CODE § 335.1(138)(I) have been renumbered since the date the violation was observed, but not repealed. The ED has recommended specific language, reflected in Attachments A and B, for the convenience of the ALJ.
  - b. Second, the ED recommends that the word "to" be inserted in the second sentence between the word "pursuant" and the citation to "30 Texas Administrative Code § 335.1(138)(I)."
  - c. Third, the ED recommends that the words "as in effect on February 7, 2013," be inserted in the second sentence between the citation to "30 Texas Administrative Code § 335.1(138)(I)" and the word "and" for consistency with the citation to the same rule in the sentence immediately prior, and to more specifically reference the cited rule as it was written on the date the violation was observed.

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<sup>1</sup> A redline version of the Proposed Order with the ED's recommended changes is attached hereto as Attachment A. A copy of the Proposed Order incorporating the ED's recommended changes is attached hereto as Attachment B.

2. The ED respectfully recommends that the ALJ insert the phrase "and Texas Health and Safety Code ch. 361" immediately following the phrase "Texas Water Code § 7.054" in the first sentence of Finding of Fact No. 4.
3. The ED respectfully recommends three changes to Ordering Provision No. 1:
  - a. First, the ED recommends that the second citation to "30 Texas Administrative Code § 335.1(138)(I)" in the first sentence be deleted, as the same rule is more specifically referenced as "30 Texas Administrative Code § 335.1(138)(I) as in effect on February 7, 2013;" in the phrase immediately prior.
  - b. Second, the ED recommends that the words "compliance with all Ordering Provisions" be substituted for the words "the performance of all corrective action" in the second sentence, in order to more specifically reference the actions required by Respondent as those enumerated in the ALJ's Proposed Order under the section title "Ordering Provisions."
  - c. Third, the ED recommends that the word "Commission" be inserted before the word "Order" in both the second and third sentences for consistency with other instances of the term used in the Proposed Order.
4. The ED respectfully recommends that the word "Commission" be inserted before the second instance of the word "Order" in Ordering Provision No. 10 for consistency with other instances of the term used in the Proposed Order.

### **Prayer**

The ED agrees with the provisions of the ALJ's Proposed Order, except as to the exceptions specifically enumerated above. To the extent that the ALJ's Proposal for Decision is inconsistent with these exceptions and recommended modifications, the ED respectfully excepts to the Proposal for Decision. The ED respectfully requests the ALJ consider the exceptions noted herein.

Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E.  
Executive Director

Caroline M. Sweeney, Deputy Director  
Office of Legal Services

Kathleen C. Decker, Director  
Litigation Division

by 

Elizabeth Carroll Harkrider  
State Bar of Texas No. 24071425  
Litigation Division, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-3400  
(512) 239-3434 (fax)

## **CERTIFICATE OF SERVICE**

I hereby certify that on this day, the 6<sup>th</sup> of May, 2015, the foregoing Executive Director's Exceptions to the ALJ's Proposed Order ("Exceptions") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day the Exceptions were sent to the following persons by the method of service indicated:

### **Via Electronic Filing**

The Honorable Administrative Law Judge Elizabeth Drews  
State Office of Administrative Hearings  
300 W. 15th Street, Suite 504  
Austin, Texas 78701-1649

and:

The Honorable Administrative Law Judge William G. Newchurch  
State Office of Administrative Hearings  
300 W. 15th Street, Suite 504  
Austin, Texas 78701-1649

### **Via Certified Mail, Return Receipt Requested**

James S. Rucker  
Rucker Environmental Services, LLC  
13911 Nitida  
Houston, Texas 77045  
Article No. 7013 0600 0001 8045 7820

and:

James S. Rucker  
Rucker Environmental Services, LLC  
P.O. Box 1076  
La Porte, Texas 77572  
Article No. 7013 0600 0001 8045 7813

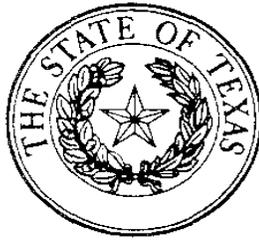
### **Via Electronic Mail**

Rudy Calderon  
Office of the Public Interest Counsel  
Texas Commission on Environmental Quality  
[rudy.calderon@tceq.texas.gov](mailto:rudy.calderon@tceq.texas.gov)

  
\_\_\_\_\_  
Elizabeth Carroll Harkrider

**ATTACHMENT A**  
Redlined Version of ALJ's Proposed Order

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



**AN ORDER  
ASSESSING ADMINISTRATIVE PENALTIES AGAINST  
AND ORDERING CORRECTIVE ACTION BY  
RUCKER ENVIRONMENTAL SERVICES, LLC  
TCEQ DOCKET NO. 2013-1279-IHW-E;  
SOAH DOCKET NO. 582-14-2722**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Rucker Environmental Services, LLC (Respondent). A proposal for decision (PFD) was presented by William G. Newchurch, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following findings of fact and conclusions of law:

**I. FINDINGS OF FACT**

1. Respondent owns and operates a tank washing and repair facility located at 10201 Bay Area Boulevard, Suite 266, Pasadena, Harris County, Texas (Facility). The Facility involves the management and/or the disposal of industrial hazardous waste as defined in Texas Health and Safety Code ch. 361.
2. During an investigation of the Facility conducted on February 7, 2013, a TCEQ investigator documented that Respondent had violated the following requirements:

- a. 30 Texas Administrative Code § 335.94(a) and 40 Code of Federal Regulations (CFR) § 263.12, by failing to maintain the 10-day storage limit applicable to transfer facilities. Specifically, 21 drums of hazardous waste in Container Storage Area (CSA) 001 were marked with accumulation dates ranging from December 16, 2012, to January 26, 2013, which exceeded the 10-day storage limit;
  - b. 30 Texas Administrative Code §§ 335.503 and 335.513 and 40 CFR § 262.11, by failing to conduct hazardous waste determinations and classifications and maintain the required documentation. Specifically, Respondent did not conduct and maintain adequate waste determinations and classifications on the material commingled in the landfill bins that resulted from the cleaning of the Resource Conservation and Recovery Act (RCRA) empty containers;
  - c. 30 Texas Administrative Code § 335.1(138)(I) in effect on February 7, 2013,<sup>1</sup> 30 Texas Administrative Code § 335.2(a), and 40 CFR § 261.2(f), by failing to obtain authorization for industrial and hazardous waste storage, processing, or disposal. Specifically, Respondent accepted hazardous waste containers from treatment, storage, and disposal facilities for cleaning but could not demonstrate, pursuant to 30 Texas Administrative Code § 335.1(138)(I), as in effect on February 7, 2013, and 40 CFR § 261.2(f), that the hazardous waste in the containers met an exemption;
  - d. 30 Texas Administrative Code § 335.11(a) and (b), by failing to maintain proper manifest documentation for the shipment or delivery of hazardous or Class 1 waste. Specifically, Respondent did not maintain manifest documentation for the non-RCRA empty hazardous waste containers or the residues that were generated and repackaged at the Facility;
  - e. 30 Texas Administrative Code § 335.69(f)(4) and 40 CFR § 262.34(d)(4), by failing to indicate the beginning date of accumulation on each container. Specifically, one 55-gallon drum in CSA 001 was not labeled with the beginning date of accumulation; and
  - f. 30 Texas Administrative Code § 335.6(c), by failing to update the Facility's Notice of Registration (NOR). Specifically, the NOR was not updated to reflect the correct regulated entity and customer name information.
3. Respondent received notice of the violations on or about August 20, 2013.
  4. On January 13, 2014, the Executive Director filed the EDPRP, in accordance with Texas Water Code § 7.054 and Texas Health and Safety Code ch. 361, alleging that Respondent committed the above violations and recommending that the Commission enter an order

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<sup>1</sup> Following the date this violation was documented, the provisions of 30 Texas Administrative Code § 335.1 were reorganized. 40 Tex. Reg. 77 (Jan. 8, 2015). The requirements of 30 Texas Administrative Code § 335.1(138)(I), in effect at the time of the violation, can currently be found at 30 Texas Administrative Code § 335.1(140)(I).

assessing a total administrative penalty of \$29,662 against Respondent for the violations. The Executive Director also recommended that the Commission order Respondent to take certain corrective actions, which are set out below in this order.

5. On February 3, 2014, Respondent filed a request for hearing.
6. The Commission's Chief Clerk referred this case to SOAH for hearing.
7. On March 24, 2014, the Commission's Chief Clerk sent a notice of preliminary hearing to Respondent, the Executive Director, and the Office of Public Interest Counsel.
8. The notice of hearing:
  - a. Indicated the time, date, place, and nature of the hearing;
  - b. Stated the legal authority and jurisdiction for the hearing;
  - c. Indicated the statutes and rules the Executive Director alleged that Respondent violated; and
  - d. Referred to the EDPRP, which was attached and stated the facts and violations asserted by the Executive Director.
9. On April 23, 2014, the Executive Director filed an agreed motion to waive the preliminary hearing, admit exhibits to show jurisdiction, and set the hearing on the merits for September 18, 2014. An ALJ granted the motion.
10. The hearing on the merits was continued, on agreed motion of the parties, to give them time to attempt to settle. The continuance was extended, at the parties' request, to give them more time to attempt to settle.
11. On or before September 16, 2014, Respondent raised a financial inability to pay (FIP) claim.
12. On November 10 and December 10, 2014, the Executive Director communicated to Respondent a list of outstanding financial records and information relevant and necessary to analyze Respondent's FIP claim.
13. The Executive Director has not received from Respondent the records and information requested on November 10, 2014, and December 10, 2014.
14. On December 15, 2014, Respondent entered into a written agreement with the Executive Director. Respondent agreed to stipulate to the alleged violations and the proposed penalty if Respondent did not submit all required financial documents by January 30, 2015, and qualify for the FIP program, as determined by the TCEQ Financial Administration Division.

15. Respondent has not submitted financial documents showing it qualifies for the FIP program.
16. More than 30 days have passed since Respondent raised its FIP claim.
17. Respondent has not submitted documentation to show that the Facility is no longer operating and that all wastes have been disposed of properly.
18. Respondent has stipulated that it committed the violations alleged in the EDPRP and should be assessed a \$29,662 penalty for the violations, as proposed in the EDPRP.
19. On March 23, 2015, the Executive Director filed a motion for summary disposition of this case and served it on Respondent by certified mail and on Office of Public Interest Counsel (OPIC) by electronic mail.
20. On March 26, 2015, the ALJ issued Order No. 7. In accordance with 30 Texas Administrative Code § 80.137, the order set April 6, 2015, as the deadline for Respondent to reply to the motion for summary disposition and April 7, 2015, as the date on or after which the ALJ would rule on the motion.
21. Respondent did not file a response to the motion for summary disposition.
22. OPIC did not oppose the motion for summary disposition.
23. On April 16, 2015, the ALJ admitted into evidence the exhibits attached to the motion for summary disposition; granted the motion; and issued a PFD recommending that the Commission find that the Respondent committed the violations alleged, assess the penalties recommended, and order the corrective action recommended in the EDPRP.
24. The exhibits attached to the motion for summary disposition and the pleadings in this case show that there is no genuine issue as to any material fact and the Executive Director is entitled to summary disposition as a matter of law on all of the issues in this case.

## **II. CONCLUSIONS OF LAW**

1. The Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or the Texas Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder. Tex. Water Code § 7.051.
2. The Commission may also order a violator to take corrective action. Tex. Water Code § 7.073.

3. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
4. Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations and the penalties and corrective actions proposed therein. Tex. Water Code § 7.055; 30 Tex. Admin. Code §§ 1.11, 70.104.
5. Respondent was notified of the hearing on the alleged violations and the proposed penalties and corrective actions. Tex. Gov't Code §§ 2001.051(1) and .052; Texas Water Code § 7.058; 1 Tex. Admin. Code § 155.401; 30 Tex. Admin. Code §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
6. Summary disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records, if any, on file in the case at the time of the hearing, or filed thereafter and before judgment with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response. 30 Tex. Admin. Code § 80.137(c).
7. In this case, the materials mentioned in 30 Texas Administrative Code § 80.137(c) show that summary disposition should be granted to the Executive Director and against Respondent.
8. Respondent violated 30 Texas Administrative Code § 335.1(138)(I) in effect on February 7, 2013; 30 Texas Administrative Code §§ 335.2(a), 335.6(c), 335.11(a) and (b), 335.69(f)(4), 335.94(a), 335.503, and 335.513; and 40 CFR §§ 261.2(f), 262.34(d)(4), 262.11, and 263.12.
9. Respondent has waived its FIP claim. 30 Tex. Admin. Code § 70.8(b).
10. The \$29,662 administrative penalty sought in the EDPRP was properly calculated in accordance with the TCEQ Penalty Policy (September 1, 2011) and in consideration of the factors outlined in Texas Water Code § 7.053.
11. Respondent should be assessed a penalty of \$29,662 for its violations proven in this case.
12. The corrective actions recommended in the EDPRP are necessary to bring the Facility into compliance with the requirements of Texas Health and Safety Code ch. 361 and 30 Texas Administrative Code ch. 335.
13. Respondent should be ordered to take the corrective actions recommended in the EDPRP.

### III. ORDERING PROVISIONS

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. Within 30 days after the effective date of this Commission Order, Rucker Environmental Services, LLC shall pay an administrative penalty in the amount of \$29,662 for its violations of 30 Texas Administrative Code § 335.1(138)(I) as in effect on February 7, 2013; 30 Texas Administrative Code §§ ~~335.1(138)(I)~~, 335.2(a), 335.6(c), 335.11(a) and (b), 335.69(f)(4), 335.94(a), 335.503, and 335.513; and 40 CFR §§ 261.2(f), 262.34(d)(4), 262.11, and 263.12. The payment of this administrative penalty and ~~the performance of all corrective action~~ compliance with all Ordering Provisions listed herein will completely resolve the violations set forth by this Commission Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Checks rendered to pay penalties imposed by this Commission Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Rucker Environmental Services, LLC; TCEQ Docket No. 2013-1279-IHW-E" to:

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

2. Immediately upon the effective date of this Commission Order, Respondent shall cease cleaning of the RCRA empty containers until such time that documentation is provided which demonstrates that the hazardous waste in the containers meets an exemption, in accordance with 30 Texas Administrative Code § 335.1(138)(I) and 40 CFR § 261.2(f).
3. Within 30 days after the effective date of this Commission Order, Respondent shall:
  - a. Remove the 21 drums of hazardous waste in CSA 001 with accumulation dates ranging from December 16, 2012 to January 26, 2013, and dispose of them at an authorized facility;
  - b. Develop and implement procedures to ensure that all containers storing hazardous waste are removed within the allotted accumulation time limit and transported to a facility authorized to accept the waste, in accordance with 30 Texas Administrative Code § 335.94;
  - c. Begin conducting waste determinations and classifications on the material commingled in the landfill bins, in accordance with 30 Texas Administrative Code §§ 335.503 and 335.513 and 40 CFR § 262.11;

- d. Begin maintaining adequate documentation of waste determinations and classifications on the material commingled in the landfill bins that resulted from the cleaning of the RCRA empty containers, in accordance with 30 Texas Administrative Code §§ 335.503 and 335.513 and 40 CFR § 262.11;
  - e. Begin maintaining waste manifests for shipments or deliveries of Class 1 or industrial hazardous waste, in accordance with 30 Texas Administrative Code § 335.11;
  - f. Label the 55-gallon drum in CSA 001 with the beginning date of accumulation; and
  - g. Update the Facility's NOR to include the correct regulated entity and customer name information, in accordance with of 30 Texas Administrative Code § 335.6.
4. Within 45 days after the effective date of this Commission Order, Respondent shall submit written certification to demonstrate compliance with the above corrective action provisions. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records; shall be notarized by a State of Texas Notary Public; and shall include the following certification language:

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

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

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

and:

Jason Ybarra, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas 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 Commission Order.
7. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
8. The effective date of this Commission Order is the date the Order is final. Tex. Gov't Code § 2001.144; 30 Tex. Admin. Code § 80.273.
9. The Commission's Chief Clerk shall forward a copy of this Commission Order to Respondent.
10. If any provision, sentence, clause, or phrase of this Commission Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Commission Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

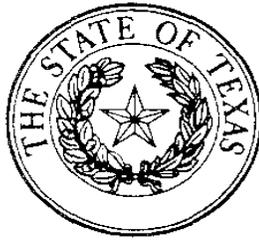
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**Bryan W. Shaw, Ph.D., P.E., Chairman**  
**For the Commission**

**ATTACHMENT B**

ALJ's Proposed Order Incorporating ED's Recommendations

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



**AN ORDER  
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AND ORDERING CORRECTIVE ACTION BY  
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TCEQ DOCKET NO. 2013-1279-IHW-E;  
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  - b. Stated the legal authority and jurisdiction for the hearing;
  - c. Indicated the statutes and rules the Executive Director alleged that Respondent violated; and
  - d. Referred to the EDPRP, which was attached and stated the facts and violations asserted by the Executive Director.
9. On April 23, 2014, the Executive Director filed an agreed motion to waive the preliminary hearing, admit exhibits to show jurisdiction, and set the hearing on the merits for September 18, 2014. An ALJ granted the motion.
10. The hearing on the merits was continued, on agreed motion of the parties, to give them time to attempt to settle. The continuance was extended, at the parties' request, to give them more time to attempt to settle.
11. On or before September 16, 2014, Respondent raised a financial inability to pay (FIP) claim.
12. On November 10 and December 10, 2014, the Executive Director communicated to Respondent a list of outstanding financial records and information relevant and necessary to analyze Respondent's FIP claim.
13. The Executive Director has not received from Respondent the records and information requested on November 10, 2014, and December 10, 2014.
14. On December 15, 2014, Respondent entered into a written agreement with the Executive Director. Respondent agreed to stipulate to the alleged violations and the proposed penalty if Respondent did not submit all required financial documents by January 30, 2015, and qualify for the FIP program, as determined by the TCEQ Financial Administration Division.

15. Respondent has not submitted financial documents showing it qualifies for the FIP program.
16. More than 30 days have passed since Respondent raised its FIP claim.
17. Respondent has not submitted documentation to show that the Facility is no longer operating and that all wastes have been disposed of properly.
18. Respondent has stipulated that it committed the violations alleged in the EDPRP and should be assessed a \$29,662 penalty for the violations, as proposed in the EDPRP.
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22. OPIC did not oppose the motion for summary disposition.
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24. The exhibits attached to the motion for summary disposition and the pleadings in this case show that there is no genuine issue as to any material fact and the Executive Director is entitled to summary disposition as a matter of law on all of the issues in this case.

## **II. CONCLUSIONS OF LAW**

1. The Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or the Texas Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder. Tex. Water Code § 7.051.
2. The Commission may also order a violator to take corrective action. Tex. Water Code § 7.073.

3. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
4. Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations and the penalties and corrective actions proposed therein. Tex. Water Code § 7.055; 30 Tex. Admin. Code §§ 1.11, 70.104.
5. Respondent was notified of the hearing on the alleged violations and the proposed penalties and corrective actions. Tex. Gov't Code §§ 2001.051(1) and .052; Texas Water Code § 7.058; 1 Tex. Admin. Code § 155.401; 30 Tex. Admin. Code §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
6. Summary disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records, if any, on file in the case at the time of the hearing, or filed thereafter and before judgment with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response. 30 Tex. Admin. Code § 80.137(c).
7. In this case, the materials mentioned in 30 Texas Administrative Code § 80.137(c) show that summary disposition should be granted to the Executive Director and against Respondent.
8. Respondent violated 30 Texas Administrative Code § 335.1(138)(I) in effect on February 7, 2013; 30 Texas Administrative Code §§ 335.2(a), 335.6(c), 335.11(a) and (b), 335.69(f)(4), 335.94(a), 335.503, and 335.513; and 40 CFR §§ 261.2(f), 262.34(d)(4), 262.11, and 263.12.
9. Respondent has waived its FIP claim. 30 Tex. Admin. Code § 70.8(b).
10. The \$29,662 administrative penalty sought in the EDPRP was properly calculated in accordance with the TCEQ Penalty Policy (September 1, 2011) and in consideration of the factors outlined in Texas Water Code § 7.053.
11. Respondent should be assessed a penalty of \$29,662 for its violations proven in this case.
12. The corrective actions recommended in the EDPRP are necessary to bring the Facility into compliance with the requirements of Texas Health and Safety Code ch. 361 and 30 Texas Administrative Code ch. 335.
13. Respondent should be ordered to take the corrective actions recommended in the EDPRP.

### III. ORDERING PROVISIONS

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. Within 30 days after the effective date of this Commission Order, Rucker Environmental Services, LLC shall pay an administrative penalty in the amount of \$29,662 for its violations of 30 Texas Administrative Code § 335.1(138)(I) as in effect on February 7, 2013; 30 Texas Administrative Code §§ 335.2(a), 335.6(c), 335.11(a) and (b), 335.69(f)(4), 335.94(a), 335.503, and 335.513; and 40 CFR §§ 261.2(f), 262.34(d)(4), 262.11, and 263.12. The payment of this administrative penalty and compliance with all Ordering Provisions listed herein will completely resolve the violations set forth by this Commission Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Checks rendered to pay penalties imposed by this Commission Order shall be made out to “TCEQ.” Administrative penalty payments shall be sent with the notation “Re: Rucker Environmental Services, LLC; TCEQ Docket No. 2013-1279-IHW-E” to:

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

2. Immediately upon the effective date of this Commission Order, Respondent shall cease cleaning of the RCRA empty containers until such time that documentation is provided which demonstrates that the hazardous waste in the containers meets an exemption, in accordance with 30 Texas Administrative Code § 335.1(138)(I) and 40 CFR § 261.2(f).
3. Within 30 days after the effective date of this Commission Order, Respondent shall:
  - a. Remove the 21 drums of hazardous waste in CSA 001 with accumulation dates ranging from December 16, 2012 to January 26, 2013, and dispose of them at an authorized facility;
  - b. Develop and implement procedures to ensure that all containers storing hazardous waste are removed within the allotted accumulation time limit and transported to a facility authorized to accept the waste, in accordance with 30 Texas Administrative Code § 335.94;
  - c. Begin conducting waste determinations and classifications on the material commingled in the landfill bins, in accordance with 30 Texas Administrative Code §§ 335.503 and 335.513 and 40 CFR § 262.11;

- d. Begin maintaining adequate documentation of waste determinations and classifications on the material commingled in the landfill bins that resulted from the cleaning of the RCRA empty containers, in accordance with 30 Texas Administrative Code §§ 335.503 and 335.513 and 40 CFR § 262.11;
  - e. Begin maintaining waste manifests for shipments or deliveries of Class 1 or industrial hazardous waste, in accordance with 30 Texas Administrative Code § 335.11;
  - f. Label the 55-gallon drum in CSA 001 with the beginning date of accumulation; and
  - g. Update the Facility's NOR to include the correct regulated entity and customer name information, in accordance with of 30 Texas Administrative Code § 335.6.
4. Within 45 days after the effective date of this Commission Order, Respondent shall submit written certification to demonstrate compliance with the above corrective action provisions. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records; shall be notarized by a State of Texas Notary Public; and shall include the following certification language:

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

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

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

and:

Jason Ybarra, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas 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 Commission Order.
7. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
8. The effective date of this Commission Order is the date the Order is final. Tex. Gov't Code § 2001.144; 30 Tex. Admin. Code § 80.273.
9. The Commission's Chief Clerk shall forward a copy of this Commission Order to Respondent.
10. If any provision, sentence, clause, or phrase of this Commission Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Commission Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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**Bryan W. Shaw, Ph.D., P.E., Chairman**  
**For the Commission**