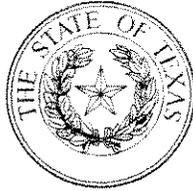


# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

April 16, 2015

Tucker Royall, General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin Texas 78711-3087

Re: **SOAH Docket No. 582-14-2722; TCEQ Docket No. 2013-1279-IHW-E; In Re: Executive Director of the Texas Commission on Environmental Quality v. Rucker Environmental Services, LLC**

Dear Mr. Royall:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than May 7, 2015. Any replies to exceptions or briefs must be filed in the same manner no later than May 18, 2015.

This matter has been designated **TCEQ Docket No. 2013-1279-IHW-e; SOAH Docket No. 582-14-2722**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in cursive script that reads "William G. Newchurch".

William G. Newchurch  
Administrative Law Judge

WGN/Ls  
Enclosures  
cc: Mailing List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**AUSTIN OFFICE**

300 West 15th Street Suite 502  
Austin, Texas 78701  
Phone: (512) 475-4993  
Fax: (512) 322-2061

**SERVICE LIST**

**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)  
**STYLE/CASE:** RUCKER ENVIRONMENTAL SERVICES LLC  
**SOAH DOCKET NUMBER:** 582-14-2722  
**REFERRING AGENCY CASE:** 2013-1279-IHW-E

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ WILLIAM G. NEWCHURCH**

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**REPRESENTATIVE / ADDRESS**

**PARTIES**

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OFFICE OF PUBLIC INTEREST COUNSEL

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RUCKER ENVIRONMENTAL SERVICES, LLC

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

<b>EXECUTIVE DIRECTOR OF THE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>TEXAS COMMISSION ON</b>	§	
<b>ENVIRONMENTAL QUALITY,</b>	§	
<b>    Petitioner</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>RUCKER ENVIRONMENTAL</b>	§	
<b>SERVICES, LLC,</b>	§	
<b>    Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) alleges that Rucker Environmental Services, LLC (Respondent) has violated several TCEQ industrial hazardous waste rules and related United States Environmental Protection Agency rules that TCEQ has adopted by reference.<sup>1</sup> The ED proposes that the TCEQ assess the Respondent a total penalty of \$29,662 for these violations and order the Respondent to take corrective action.

The ED and the Respondent have entered into a written agreement in which the Respondent stipulated to the violations and penalties if the Respondent did not submit supporting documentation and qualify for participation in TCEQ's financial inability to pay (FIP) program. The Respondent never provided documentation demonstrating it qualified for the FIP program. The ED attempted to resolve this case with an agreed order, but the Respondent did not sign the proposed agreed order.

The ED filed a motion for summary disposition of the case and attached and offered exhibits supporting the motion. The ED contends that the exhibits show that there is no genuine issue as to any material fact and the ED is entitled to summary disposition as a matter of law on all of the issues in this case. In the motion, the ED certified that his counsel had contacted the

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<sup>1</sup> 30 Tex. Admin. Code §§ 335.1(138)(I), .2(a), .6(c), .11(a) & (b), .69(f)(4), .94(a), .503, .513; 40 Code of Federal Regulations (CFR) §§ 261.2(f), 262.11, .12, .34(d)(4).

Respondent, and the Respondent did not indicate that he opposed the motion. The assistant to the Administrative Law Judge (ALJ) attempted, but was unable, to contact the Respondent's representative by phone to confirm the Respondent's position on the motion for summary disposition.

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 the Respondent to reply to the motion for summary disposition and set April 7, 2015, as the date on or after which the ALJ would rule on the motion. The Respondent did not file a response to the motion, and the ALJ admitted the exhibits offered by the ED.

On April 16, 2015, the ALJ granted the motion for summary disposition. The ALJ now recommends that the TCEQ adopt the attached proposed order, find that the Respondent committed the alleged violations, assess the Respondent a total of \$29,662 for the violations, and order the Respondent to take corrective action.

**SIGNED April 16, 2015**



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**WILLIAM G. NEWCHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**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, 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 30 Texas Administrative Code § 335.1(138)(I) 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, alleging that Respondent committed the above violations and recommending that the Commission enter an order 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 listed herein will completely resolve the violations set forth by this 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 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 Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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