Texas Commission on Environmental Quality
Investigation Report

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Customer: CES Environmental Services, Inc.
Customer Number: CN600618946

Regulated Entity Name: CES ENVIRONMENTAL SERVICES
Regulated Entity Number: RN100693282

Investigation # 830340

Investigator: BARBARA JOHNSTON

Incident Numbers

Site Classification CONTAINER STORAGE AREA
MISCELLANEOUS STORAGE CONTAINERS
TANK (SURFACE)
WASTEWATER TREATMENT PLANT
RECYCLER
LARGE QUANTITY GENERATOR
USED OIL PROCESSOR
USED OIL TRANSPORTER
IHW TRANSPORTER
TRANSFER FACILITY

Conducted: 04/01/2010 -- 04/19/2010

SIC Code: 1542
NAIC Code: 562219
SIC Code: 4212

Program(s): INDUSTRIAL AND HAZARDOUS WASTE
USED OIL

Investigation Type: Compliance Investigation

Location:

Additional ID(s): A85775
30900
TXD008950461
39048

Address: 4904 GRIGGS RD,
HOUSTON, TX , 77021

Local Unit: REGION 12 - HOUSTON

Activity Type(s): IHWSPL - Sampling Investigation
IHWCDI - Case development investigation

Principal(s):

Role	Name
RESPONDENT	CES ENVIRONMENTAL SERVICES INC

Contact(s):

Role	Title	Name	Phone	
Participated in Investigation	ATTORNEY	COURTNEY GABRILLE	Work	(713) 893-7973
Participated in Investigation	OPERATIONS MANAGER	SAM BROWN	Work	(713) 676-1460
Participated in Investigation	HSE MANAGER	PRABHAKAR THANGUDU	Work	(713) 676-1460
Participated in Investigation	ATTORNEY	MR JON C VICKLUND	Work	(713) 871-6811
Participated in Investigation	PRESIDENT AND REGISTERED AGENT	MATT BOWMAN	Work	(713) 676-1460
Regulated Entity Mail Contact	PRESIDENT AND REGISTERED AGENT	MATT BOWMAN		

Other Staff Member(s):

Role	Name
QA Reviewer	NICOLE BEALLE
QA Reviewer	CASIMIR ONWUKA
Supervisor	CARLOS ROMO
Investigator	CHARLES BURNER

Associated Check List

Checklist Name	Unit Name
IHW SAMPLE ANALYSES RESULTS - FY06	CES Environmental
IHW PRE-INVESTIGATION	CES Environmental
IHW GENERIC OTHER ISSUES OR VIOLATIONS (10 ITEMS)	CES Environmental

Investigation Comments:

INTRODUCTION
On April 1, 2010, Ms. Barbara Johnston and Mr. Charles Burner, Environmental Investigators with the Texas Commission on Environmental Quality (TCEQ) Houston Region Office, conducted an Industrial and Hazardous Waste Sampling Investigation (IHWSPL) at CES Environmental Services (CES), located at 4904 Griggs Road, Houston (Harris County), Texas 77021. The site location map and site diagrams are provided in Attachment 1. Ms. Sharareh Rafati and Mr. Mike Taylor, TCEQ Air Investigators, Mr. Gary Fogarty, TCEQ Water Section Investigator, and Mr. John Gott, TCEQ Air Permits Engineer, also represented the agency during the investigation. This multi-media investigation was arranged and conducted at the request of the State of Texas Office of Attorney General (OAG). A sampling plan was prepared by Ms. Johnston on March 19, 2010 (Attachment 2). The purpose of the sampling event was to screen any incoming shipments of wastes, and any wastes being stored at CES in tanks, roll-off boxes, and drums. Surface water and near-surface soil samples were to be collected only if impacts to those media were observed. The TCEQ Air Section prepared a separate sampling plan, which is referenced in CCEDs Investigation No. 830249. During the investigation CES was represented by Mr. Matt Bowman, President of CES, Mr. Sam Brown, CES Operations Manager, Ms. Courtney Gabrille, attorney from Camera and Sibley, and Mr. Jon Vicklund, attorney from Beirne, Maynard, and Parsons. Oil Mop, LLC (Oil Mop) was contracted by TCEQ to conduct the sampling under the direction of TCEQ Houston Region personnel. Mr. Tony Stamper was the site supervisor for Oil Mop, and Ms. Ann Stamper prepared the chain of custody forms for the laboratory, A&B Laboratories, who collected the samples at CES Environmental, analyzed the samples, and prepared the laboratory reports.

Nineteen waste samples were collected during the investigation. The laboratory results are provided in

Attachment 3, and discussed in the Analytical Results section of this report. During the sampling investigation, five alleged violations documented in Consolidated Compliance and Enforcement Data System (CCEDS) Investigation No. 707324/TCEQ Enforcement Case No. 37096 and were reaffirmed, while four new alleged violations were cited. The alleged violations are discussed in the Summary of Investigation Findings.

GENERAL FACILTY AND WASTE PROCESS INFORMATION

CES has been conducting a variety of waste management operations at the site since 2002. CES is currently a waste broker, an industrial and hazardous waste transporter, a waste transfer facility, a tank/container wash facility, a nonhazardous industrial solid waste processing and storage facility (TCEQ IHW Permit No. 39048), and a wastewater (including hazardous wastewater) pre-treatment facility. In addition, CES recycles various solvents, and handles, processes, refines, transports, and markets used oil (TCEQ Permit A85775). CES is also a large quantity generator of hazardous wastes (TCEQ SWR No. 30900). Hazardous wastes are generated at the facility from the container and tank cleaning operations in the centralized wastewater treatment area and in the solvent recycling area. At the time of the investigation, however, the City of Houston had interrupted the facility's water and sewer service. The representatives of the facility stated that only the four following activities are currently conducted at the site:

(1) Limited washing of containers:
The representatives of the facility stated that ever since water supply to the site has been discontinued only limited washing of small totes has been carried out; the wastewater generated from this activity is stored on-site in several frac tanks.

(2) Limited operations in the Oil Processing area:
The representatives of the facility stated that the boilers that generate steam have been down, and therefore, the phase separation activities in the Oil Processing area have been limited to cold phase separation of multi-phase oily material.

(3) Bulking and storage of non-hazardous wastes:
The representatives of the facility stated that CES currently engages in combining the non-hazardous wastes that are transported to the facility in preparation for their shipment to off-site locations.

(4) Shredding
The representatives of the facility stated that CES currently engages in shredding of tires and drums.

Investigators also noted that the facility was managing used oil and used oil filters at the site. According to Mr. Bowman, CES had only three remaining employees, who worked from 8 a.m. until 4 p.m. each day.

BACKGROUND

The Houston Region Office files were reviewed and a database search was conducted pursuant to this investigation. CES has eleven outstanding IHW violations, which are detailed in TCEQ CCEDS Investigation No. 707324. This case was referred to the TX OAG (TCEQ Enforcement Case No. 37096) on September 25, 2009.

CES is located in an area with residences, three schools and a church all located within a one mile radius. Between October 3, 2005 and December 2009, the City of Houston Bureau of Air Quality Control (BARQC) has conducted at least 200 complaint investigations at CES, and has issued at least 96 citations or notices of violations for nuisance odor. In addition, the TCEQ Air Section has conducted nine odor complaint investigations at the facility during the past two years. On December 6 and 16 2008, two explosions occurred at CES. According to CES's incident report, the first explosion occurred when the thermal oxidizer unit overheated. The report further states that the unit was then shut down and restarted. CES explained that over-saturation after the unit cool-down phase caused an explosion, which ruptured the vent piping. The debris from the explosion landed in neighboring lawns. CES estimated that 239 pounds of methyl ethyl ketone (MEK) were released to the environment during the incident. Mr. Robert Aguilar, TCEQ Air Section Investigator conducted an investigation of the December 6, 2010 incident, which is documented in CCEDS Investigation No. 72419 (Incident Nos. 117520 and 117522).

The second explosion was reported on December 16, 2008. According to CES, this incident occurred when the scrubber associated with the thermal oxidizer unit malfunctioned. CES's internal investigation concluded that

latent MEK vapor in the scrubber was the most likely cause of the explosion, and that less than 200 gallons of MEK were released during the incident. No further details were reported regarding the incident.

Two additional incidents have occurred at CES in 2009. On July 7, 2009, an employee at CES died when the tanker he was preparing to clean exploded. He died from severe burns. TCEQ Air Section Investigator, Mr. Robert Aguilar conducted an Upset/Maintenance Level 1 investigation of the facility on July 8, 2009 in response to this incident, which is documented in CCEDS Investigation No. 765254. On August 4, 2009, a roll-off box of combustible waste caught fire at the facility. Criminal investigators and agents from the Environmental Protection Agency (EPA), the Department of Transportation (DOT), Texas Parks and Wildlife, TCEQ, and Texas Parks and Wildlife were present at the facility conducting an investigation when this incident occurred.

INVESTIGATION

TCEQ personnel arrived at CES Environmental at 7:30 AM, and met briefly with Mr. Stamper outside the gates of the facility to discuss the agenda for the day, and to review safety procedures and the use of the safety equipment. Mr. John Vickland, an attorney representing CES, escorted all of the TCEQ and Oil Mop personnel inside the gate, except for Gary Fogarty, who waited outside the gates until Oil Mop personnel delivered another supplied air respirator. Mr. Fogarty then joined the other investigators inside the gates. Oil Mop proceeded to set up their staging area, while TCEQ personnel went to a conference room to sign in and discuss the plans for the day with CES representatives. Ms. Courtney Gabrille, an attorney from Cameron and Sibley, also representing CES, joined the group in the conference room to gather signatures of participants. Ms. Johnston requested copies of both shipping and receiving manifests dated January 1, 2010 until March 31, 2010, and Ms. Gabrille stated that the paperwork would be gathered by Mr. Prabhakar Thangudu, CES's Health, Safety, and Environmental Manager. The manifests were delivered to the TCEQ Houston Region Office on April 14, 2010, and are included as Attachment 7 of this report.

TCEQ personnel then walked throughout the facility to determine what units were operating at the site, and to determine sampling locations. Investigators walked through the facility and observed that the wastewater treatment system was not operating, and there was very little activity at the site in general during the investigation. The container washing area, the warehouse and the nonhazardous waste processing areas appeared to have been operating recently. Liquid was accumulated on the floor surrounding the wash water tank, and mud and oily stains were observed on the floor of the tank wash area (Attachment 4, Photo 2). In the warehouse, Mr. Fogarty observed CES employees labeling drums of hazardous waste shortly after TCEQ's arrival at the facility. In addition, wastes were observed and sampled in the nonhazardous waste processing area during the inspection. No facility operations were being conducted on the day of the investigation.

The sampling plan (Attachment 2) was prepared based on observations made during the site investigations conducted in March 2009. Flexibility was allowed for on-site determinations if there were any changes in conditions at the site. Containers to be sampled were marked with colored stickers. Containers were chosen if they were unlabeled, in poor condition, open, or marked with information which indicated that the containers could contain hazardous wastes. Mr. Sam Brown, CES Operations Manager, accompanied TCEQ personnel during a portion of the investigation. Mr. Matt Bowman, owner and president of CES, also accompanied TCEQ investigators for a brief portion of the investigation. For most of the day, however, TCEQ personnel were left to conduct the investigation without the presence of CES personnel.

Air investigators used an infrared radiation (IR) camera to identify potential air sampling locations. After Mr. Burner and Ms. Johnston tagged sampling locations, they walked with Mr. Stamper who recorded the locations, and sent two teams of two technicians to collect the samples. Altogether, 19 samples were collected during the day. The samples were collected from unlabeled drums and totes in the warehouse, an open-top waste box in the warehouse (box 624), unlabeled drums and totes in WMU 105, from WMU 103 (nonhazardous sludge box), two vacuum tanks which exhibited strong odors, an open bucket, WMU 129 (a wash water tank in the container cleaning area), one used oil tank (No. 4), and three of the eight frac tanks, which were said to contain oily water.

Mr. Fogarty determined that the facility did need a storm water discharge permit because industrial processes were being conducted outside of secondary containment and were not covered. Mr. Fogarty left the property before noon. Air investigators and Mr. Gott measured distances from emission points to the property line. This activity was completed by 12:20 p.m. and they, along with Mr. Gott, left the facility at that time. Ms. Johnston and Mr. Burner, left the site for lunch at 12:20 p.m., drove the air investigators to back to the Houston Region Office.

They returned to CES at approximately 1:40 PM. Ms. Johnston and Mr. Burner had walkie-talkies, and answered technicians' questions regarding some sampling points. They also walked through the sampling areas and observed some of the samples being taken. Close observation of all sampling points could not be conducted due to safety considerations. Sampling technicians wore higher levels of personal protective equipment than TCEQ personnel on site.

Sampling was completed by Oil Mop technicians at approximately 3:00 PM. Mr. Burner left the site at approximately 3:10 PM. A&B Laboratories arrived at approximately 4:30 PM to collect the samples. Ms. Johnston witnessed the transfer of custody of the samples from Oil Mop personnel to A&B personnel. Copies of the chain of custody forms are included in Attachment 3.

All samples collected were liquids/sludges, except for the sample collected from roll-off box 624, which was noted as a solid waste on the chain of custody form. Samples TC-002, T-4-4 were analyzed in two phases due to the rapid separation of the oil and the liquid phases, while sample FT-30319 was analyzed in three phases: liquid, oil, and sludge. The sludge layer was analyzed for hydrogen sulfide only. The reasons for collecting each sample and the results of the analysis are explained in the Analytical Results section of this report.

Prior to Ms. Johnston's departure from the site, attorneys for CES stated that the manifests requested would be mailed to the Houston Region Office during the week of April 5, 2010, and they were received by the Houston Region Office on April 14, 2010 (Attachment 7). Most of the copies of manifests, however, were illegible. An exit interview was not conducted because due to the nature of the investigation (i.e. samples had not yet been analyzed). No letters regarding compliance or noncompliance issues have been sent to CES in association with this investigation, because it was conducted in conjunction with a current OAG case under the Discovery Rules of Texas Rules of Civil Procedure, and the OAG will communicate with the representatives of the regulated entity as required.

Many of the observations at the site during the sampling investigation correspond with alleged violations documented in TCEQ CCEDS Investigation No. 707324. The violations to be addressed include accepting and storing hazardous wastes without authorization, updating the facility's Notice of Registration, managing hazardous waste containers in accordance with regulatory standards, labeling used oil containers, and maintaining the facility in a manner to prevent releases and danger to public health and the environment. Additional alleged violations identified during the investigation include the lack of aisle space for containers of hazardous waste observed on site, failure to register with the TCEQ for scrap tire processing activities, and the waste determination/classification for hundreds of sample jars that were observed outside CES's closed on-site laboratory. These are discussed in further detail in the Alleged Outstanding Violations section of this report.

ANALYTICAL RESULTS

The analytical report for the samples collected on April 1, 2010 at CES was received on April 19, 2010 (Attachment 3). The analytical report was received in four sets. The following narrative summarizes the analytical results. Of the nineteen samples collected, 11 were found to be hazardous. Only one container found to be hazardous (Drum D-5) was correctly marked and dated, and one tank (Tank T-4) was labeled with the words "used oil." The other nine containers holding what appear to be hazardous wastes were either not marked, or were marked with conflicting or ambiguous language. Examples of the markings include a container being marked as containing both hazardous and nonhazardous wastes, and drums with both waste labels and product labels. Two teams of technicians from Oil Mop collected the samples, and there are slight differences in how the two teams designated the samples in the laboratory reports. For example, one team used sample identification numbers for drums such as D-1, D-2, D-3, while the other team added zeroes to the sample identification numbers (e.g. D-007, TC-002, OT-001). The sample identification numbers used in laboratory report and chain of custody forms are indicated in parentheses below.

Set No. 1 included samples collected from waste management units (WMUs) said to contain nonhazardous wastes by CES.

* WMU 103 (WMU-103 Box 601): This WMU is an open-top box said to contain nonhazardous sludge from container dig-outs (Attachment 4, Photo 1). Investigators chose to sample this box because strong organic odors had been noted near this WMU during previous site investigations. Results indicated that the contents were nonhazardous. Photos and sampler remarks indicate that plant trash was being disposed of in this box, rather than only the sludge that is supposed to be managed in it.
* WMU 129 (WMU-123 Unit 129): This tank was located in the container wash area (Attachment 4, Photo 2), and was erroneously called WMU-123 by sampling technicians. The tank is actually WMU 129. CES personnel stated

on the day of the investigation that they were only washing containers that had previously contained nonhazardous wastes/materials. No operation records were observed which would support those statements. TCEQ requested details regarding CES's container and tanker cleaning procedures, including how employees document determinations of empty containers and their management of heels removed from containers prior to cleaning. This request was included in the Outstanding Additional Issues section of the Notice of Enforcement dated August 21, 2009, associated with CCEDS Investigation No.707324. CES has not provided the information requested. Results indicated that the contents of the tank were not characteristically hazardous on April 1, 2010.

Set No. 2 included the results from the sampling of six drums, one waste roll-off box, and one tote. These samples were collected from containers in the warehouse area of the facility. Nonhazardous wastes are processed in this area, used oil and oil filters are accumulated there, and drums/tires are shredded. Some drums warehoused in the building may also have been product, although labeling issues made the task of distinguishing between wastes and products difficult. The analytical results from the samples collected are summarized below:
* Drum 1 (D-1): This was an unlabeled drum in the warehouse. The top of the drum was marked "Haz Alfol-12 LE Alcohol," and was dated 3-3-09. Results indicated the contents were nonhazardous (Attachment 4, Photo 3).
* Drum 2 (D-2): This drum was marked "TCIX 21074 Ferric Sulfate 2/12/09." It was located in the warehouse (Attachment 4, Photo 4). Results indicated that the contents exhibited the characteristic of corrosivity due to pH less than 2 standard units (s.u.).
* Drum 3 (D-3): This drum was located in the nonhazardous waste processing area of the facility, and was marked "haz adiponitrile," and was dated 7.30/09, along with a nonhazardous waste sticker (Attachment 4, Photo 5). Results indicated that the contents were nonhazardous.
* Drum 4 (D-4): This drum was in the nonhazardous waste processing area and was marked "haz slurry oil sludge," and was dated 7/15/09. The drum was also marked with a nonhazardous waste sticker. Results indicated that the contents were nonhazardous (Attachment 4, Photo 5).
* Drum 5 (D-5): This drum was located in the warehouse near the waste oil totes, and was labeled and dated as hazardous (Attachment 4, Photo 6). This drum was generated by Kinder Morgan, and was dated within the 10-day allowable window for transfer facilities. Results indicated the waste was hazardous for TCLP benzene (2.3 mg/L) and ignitability (Flash Point {FP} 77°F).
* Drum 6 (D-6): This drum was located in the warehouse (Attachment 4, Photo 7). Laboratory results indicated that the contents were hazardous for ignitability due to a flash point of 139 °F and corrosivity (pH less than 1 s.u.).
* Unlabeled tote (TC-1): This was an unlabeled tote in the warehouse which appeared to contain used oil (Attachment 4, Photo 8). Results indicated the contents were nonhazardous.
* Roll-off box 624 (RB-624): This roll-off is designated on CES's NOR as WMU 107 (Permit Unit No. 2), a 100 -yard box where nonhazardous wastes are bulked by CES prior to off-site management. Results indicated the contents of the box were nonhazardous.

Set No. 3 results include two of the unlabeled and undated containers observed in WMU 105, CES's less-than-90-day container storage area for hazardous wastes, Tank No. 4, a tank of unprocessed used oil being stored on site, and an unlabeled open bucket found near the oil processing area.

* Unlabeled Tote (TC-002): This was an unlabeled, undated tote found in WMU 105 (Attachment 4, Photo 9), CES's less than 90 day container storage area for hazardous wastes. This material had to be analyzed in phases because it separated very quickly, per laboratory personnel. Results indicated that the oil layer was hazardous for ignitability and exceeded the toxicity characteristic limit for benzene (FP 66 °F, TCLP benzene 18.8 mg/L); the liquid layer was found to be hazardous for benzene (TCLP benzene 17.4 mg/L).
* Drum 7 (D-007): This drum was corroded, and was also found unlabeled and undated in WMU 105 (Attachment 4, Photo 10). Results indicated that the contents of the drum were hazardous for ignitability (FP 114 °F).
* Open bucket (OT-001): This was an unlabeled open bucket found near the oil processing area of the facility (Attachment 4, Photo 11). Results indicated that the contents were hazardous for ignitability (FP 125 °F).
* Tank 4 (T-4): This tank was located in the oil processing area of facility (Attachment 4, Photo 12). This sample was obtained to get an idea of what type of feedstock CES was bringing in for its used oil processing. The results indicated that the oil layer was hazardous for ignitability and exceeded the toxicity characteristic limit for chloroform (FP 101 °F, TCLP chloroform 12.2 mg/L). The liquid layer was hazardous due to ignitability and exceeding the toxicity characteristic limit for chloroform (FP 108° F, TCLP chloroform 15 mg/L). Please refer to sample results to see the full profile of this material.

Set No. 4 includes the results from the sampling of the frac tanks and vacuum tanks we observed on site. Investigators were told that all frac tanks were full of oily water waiting for processing. Three out of eight frac

tanks were randomly selected to sample. None had visible "used oil" labels on them, although several of them were labeled "nonhazardous waste," and indicated that the wastes were generated by Equistar. CES employee, Mr. Sam Brown, told investigators that the labels observed were not accurate. Both vacuum boxes sampled were chosen because strong organic odors were noticed when walking by them.

* Frac tank 1002 (FT-1002): Tank located immediately east of CES's Industrial Waste Processing Storage Building (Attachment 4, Photo 13). Laboratory results indicated that the wastes were nonhazardous.
* Frac tank 506 (FT-506): This was one of the recently added frac tanks located on the property. Laboratory results indicate that the contents were nonhazardous.
* Frac tank 30319 (FT-30319): This was one of the recently added frac tanks located on the CES property (Attachment 4, Photo 14). The material in the tank was analyzed in three phases: liquid, oil, and sludge. Results indicate that the oil layer exhibited the toxicity characteristic for benzene (2.18 mg/L) and was ignitable (FP 97 ºF). The liquid layer was ignitable (FP 122 ºF). The sludge layer was analyzed for sulfide (expressed as hydrogen sulfide), and results were below reportable limits.
* Vacuum Box 639 (VACRB-639): This was an unlabeled and undated vacuum box near the property line (Attachment 4, Photo 15). Results indicated that the contents exhibited the toxicity characteristic for benzene (2.04 mg/L), and pH was greater than 12 standard units. The material also had a sulfide concentration of 9771 mg/kg, expressed as hydrogen sulfide. Investigators requested the waste profile for this material. The waste profile supplied by CES indicated that the material was a nonhazardous sludge generated by Port Arthur CES (PACES) that had been stored at CES since January 2010. This is further discussed in the Violations Update section of this report.
* Vacuum Box 610 (VACRB-610): This was an unlabeled and undated vacuum box located near the oil processing area (Attachment 4, Photo 16). Results indicated that the contents were hazardous for ignitability (FP 74 º), and that the material exhibited the toxicity characteristic for benzene (11.8 mg/L).

ADDITIONAL INFORMATION

Each TCEQ Section generated its own investigation report as a result of the multi-media investigation. The TCEQ Air Section's report is documented in CCEDS Investigation No. 830249, the Water Section's report is documented in CCEDS Investigation No. 802921, and the Waste Section's report is documented in CCEDS Investigation No. 830340.

OUTSTANDING ALLEGED VIOLATIONS

During the sampling investigation, the alleged violations were documented at CES Environmental Services (CES):

1. Permit No. 39048 Permit Provision (PP) II.C.1.h/30 Texas Administrative Code (TAC) 335.2(a) - Permit Required (Category A)

CES failed to obtain authorization from TCEQ to store the hazardous wastes contained in Vacuum Box 639 on April 1, 2010. During the sampling investigation, TCEQ investigators noted a strong organic odor in the area surrounding Vacuum Box 639, and requested that a waste determination and manifest be supplied by CES to discern the contents of the box. CES supplied manifest no. 005799800, which indicated that the waste was generated by CES Environmental Port Arthur, and was transported to CES (Houston) on January 14, 2010 (Attachment 6). Mr. Sam Brown, CES Operations Manager, also signed line 20 of the manifest, indicating that CES was the designated facility for the waste shipment, on January 14, 2010. The accompanying waste determination information states that the waste in the vacuum box is a nonhazardous organic sludge with a Texas Waste Code of 00065191. TCEQ investigator Barbara Johnston requested that Oil Mop LLC personnel obtain a sample from the vacuum box. Subsequent analyses indicate that Vacuum Box 645 contained waste that was characteristically hazardous for benzene (2.04 mg.L). CES is not authorized to store hazardous wastes at its facility in excess of the ten day window allowed for hazardous waste transfer facilities.

On April 1, 2010, TCEQ Investigator Barbara Johnston requested copies of all waste shipment and waste receipt manifests dated January 1, 2010, through March 31, 2010, from CES. On April 14, 2010, TCEQ received copies of the manifests requested (Attachment 7). Upon examination of the manifest no. 005793782, it was noted that on March 19, 2010, CES accepted a tanker truck (5,000 gallons) of characteristically hazardous wastewater (D018) from TT Barge (EPA ID No. TXLAD000132167) for wastewater treatment (Code H135). A second manifest, no. 005793662, dated February 22, 2010, also indicates that hazardous wastewater was accepted at CES for wastewater treatment from the same generator, TT Barge. At the time of both shipments, CES had been disconnected from the City of Houston's wastewater treatment plant, and could not treat hazardous wastes via its wastewater treatment plant. Therefore, CES was not authorized to accept this hazardous waste for treatment at its facility under the wastewater treatment exemption. Furthermore, CES's waste shipment manifests from February and March 2010 documented only shipments of nonhazardous wastewater being shipped off site from

CES to another wastewater treatment facility. As stated in 30 TAC 335.2(b), a facility cannot store industrial hazardous wastes without TCEQ authorization. As a transfer facility CES is authorized to store hazardous wastes for up to 10 days. The facility may no longer accept hazardous wastes for wastewater treatment, since its Permit No. 39048 is not valid unless the facility has a permitted discharge regulated by the Clean Water Act.

CES must provide an explanation regarding the treatment of the shipments of hazardous waste that were accepted at the facility on February 22, 2010, and March 19, 2010.

2. Permit No. 39048 Permit Provision (PP) II.C.1.h/30 TAC 335.69(a)(4)(A)/40 CFR 265.35 - Aisle Space (Category C)
CES failed to maintain aisle space to allow for movement between drums, inspections of hazardous waste containers, and emergency response.

On April 1, 2010, six drums of hazardous waste were observed in the warehouse area of the facility. The drums had labels stating that the hazardous wastes were generated by Kinder Morgan. The aisle space provided was not adequate to allow unobstructed movement between the drums, inspections of the containers, or emergency response activities (Attachment 4, Photo 19).

CES must maintain adequate aisle space for all containers of hazardous waste being stored at its facility.

3. 30 TAC 328.63(c) - Scrap Tire Facility Registration (Category B)
CES failed to register their scrap tire processing activities with TCEQ before starting operations..

On April 1, 2010, TCEQ investigators observed 18 tires in the warehouse area of CES, near the shredder. Mr. Bowman stated that the tires were generated by CES, and that CES was shredding the tires prior to disposal (Attachment 4, Photo 20).

CES must cease processing scrap tires at its facility until it complies with TCEQ registration requirements.

4. Permit No. 39048 Permit Provision (PP) II.C.1.h/30 TAC §335.62 incorporating 30 TAC §335.504 and 40 CFR §262.11- Hazardous Waste Determination and Waste Classification (Category B)
CES failed to conduct a hazardous waste determination and waste classification on the contents of the bottles located near the facility's closed laboratory.

During the investigation hundreds of jars and bottles were observed outside the door of CES's former on-site laboratory (Attachment 4, Photo 21). Although 40 CFR 261.4(d) and (e) exclude laboratory samples and treatability samples from hazardous waste regulations, records must be maintained on site to document compliance with the provisions of the exemptions. Since the CES laboratory was not operating at the time of the investigation, it could not be determined if the facility was in compliance with the stated exemptions, or if the samples were subject to industrial solid waste regulations.

CES must provide documentation to the TCEQ that the samples observed outside the laboratory on April 1, 2010 either comply with the exemptions found in 40 CFR 261.4(d) and (e), or that a waste determination and characterization has been conducted on the wastes, and that they have been managed and disposed of accordingly.

5. Permit No. 39048 Permit Provision (PP) II.C.1.h/30 TAC 335.6(c)-Notification Requirements (Category C)
CES failed to update its Notice of Registration to reflect changes in the facility operations and waste management units.

On April 1, 2010, TCEQ investigators observed that waste management units 109 through 128, and units 132 through 138 are listed as "RCRA Pmt. Exempt-WWT" on CES's NOR (Attachment 5). Since the facility had no water, and any wash water generated on site, or wastewater brought into the site is transported off site for treatment, the wastewater exemption no longer applies to these units. In addition, since March 2009, numerous pieces of equipment and processes have been relocated off site. As referenced in 30 Texas Administrative Code (TAC) 335.6(c), a generator must update its Notice of Registration (NOR) to accurately reflect conditions at the facility within 90 days of a change in the information that was previously reported.

CES must update its NOR to reflect current waste streams generated and current waste management units, including the regulatory status of the waste management units.

6. Permit No. 39048 Permit Provision (PP) II.C.1.h /30 TAC 335.4 (1)(2)(3)-General Prohibitions (Category B)
CES failed to prevent the threat of imminent discharge to the waters of the state without proper authorization, and failed to prevent the creation and maintenance of a nuisance and the endangerment of public health and welfare at its facility.
On July 7, 2009, an employee at CES died when the tanker he was preparing to clean exploded. A roll-off box of combustible waste also caught fire at the facility on August 4, 2009. Federal and local enforcement agents were present at the facility conducting an investigation when the August 4, 2009 incident occurred. Both incidents illustrate that CES, which is located in a residential neighborhood, has failed to maintain its facility in a manner to prevent harm to public health and welfare.

On April 1, 2010, oil-stained and broken concrete were observed in the container cleaning area (Attachment 4, Photo 17) near WMU 129. In addition, oily wastewater and debris were observed in the secondary containment of WMU 123 (Attachment 4, Photos 18), which is located in an uncovered area of the facility, compromising the effectiveness of the secondary containment in the event of heavy precipitation or a release from the tank. As referenced in 30 TAC 335.4 (1)(2)(3), a generator must maintain its facility in a manner to prevent the imminent threat of discharge of an industrial solid waste, the creation of nuisance conditions and the endangerment of the public health and welfare.

7. Permit No. 39048 Permit Provision (PP) II.C.1.h/30 TAC 335.69(a)(2)/40 CFR 262.34 (a)(2) - Labels (Category C)
CES failed to clearly mark all of its containers of hazardous waste with the words "Hazardous Waste" and the date upon which each period of accumulation began.

On April 1, 2010, the following containers were observed at CES without hazardous waste container labels and accumulation start dates:

Vacuum boxes 639 and 610
Open bucket OT-001
Tote TC-002
Drum D-007
Frac Tank 30319
Drum D-2
Drum D-6
Drum D-7

Sampling and analyses of the contents of these containers confirmed that all of the contents were characteristically hazardous.

CES must clearly label all containers and tanks containing hazardous wastes with the words "Hazardous Waste" and the accumulation start date.

8. Permit No. 39048 Permit Provision (PP) II.C.1.h/30 TAC 335.69(a)(1)(A)/40 CFR 262.34(a0(1)(i), referencing 40 CFR 265.173(a)-Management of Containers (Category C)
CES failed to keep a container of hazardous waste closed except for adding or removing waste.

On April 1, 2010, an open bucket of waste (sample OT-001) was observed at the site. When sampled and analyzed, the contents of the bucket were determined to be hazardous for ignitability.

CES must keep containers of hazardous waste closed, except when adding or removing waste.

9. 30 TAC 324. 6/40 CFR 279.22 (c)(1) - Used Oil Labels (Category C)
CES failed to label its containers of used oil and used oil filters as specified in state and federal.

During the site investigation on April 1, 2010, two totes of used oil and four drums of used oil and used oil filters were stored in the used oil management area of the facility without being marked with the words "used oil."

CES must label its used oil containers and tanks in accordance with state and federal regulations.

OUTSTANDING ALLEGED VIOLATION(S)
ASSOCIATED TO A NOTICE OF ENFORCEMENT

Track Number: 411350 **Compliance Due Date: 10/01/2010**

Violation Start Date: Unknown

30 TAC Chapter 335.2(a)

PERMIT 39048, P.P. II.C.1.h.

Incorporated Regulatory Requirements
State Regulations
30 TAC Chapter 335, Subchapter A: Industrial Solid Waste and Municipal Hazardous Waste

Alleged Violation:

Investigation: 830340 Comment Date: 08/30/2010

CES failed to obtain authorization from TCEQ to store the hazardous wastes contained in Vacuum Box 639 on April 1, 2010. During the sampling investigation, TCEQ investigators noted a strong organic odor in the area surrounding Vacuum Box 639, and requested that a waste determination and manifest be supplied by CES to discern the contents of the box. CES supplied manifest no. 005799800, which indicated that the waste was generated by CES Environmental Port Arthur, and was transported to CES (Houston) on January 14, 2010 (Attachment 6). Mr. Sam Brown, CES Operations Manager, also signed line 20 of the manifest, indicating that CES was the designated facility for the waste shipment, on January 14, 2010. The accompanying waste determination information states that the waste in the vacuum box is a nonhazardous organic sludge with a Texas Waste Code of 00065191. TCEQ investigator Barbara Johnston requested that Oil Mop LLC personnel obtain a sample from the vacuum box. Subsequent analyses indicate that Vacuum Box 645 contained waste that was characteristically hazardous for benzene (2.04 mg.L). CES is not authorized to store hazardous wastes at its facility in excess of the ten day window allowed for hazardous waste transfer facilities.

Recommended Corrective Action: CES must provide an explanation regarding the treatment of the shipments of hazardous waste that were accepted at the facility on February 22, 2010, and March 19, 2010.

Track Number: 411352 **Compliance Due Date: 10/01/2010**

Violation Start Date: Unknown

30 TAC Chapter 335.69(a)(4)(A)
40 CFR Chapter 265.35

PERMIT 39048, P.P.II.C.1.h.

Incorporated Regulatory Requirements
State Regulations
30 TAC 335, Subchapter A: Industrial Solid Waste and Municipal Hazardous Waste

Alleged Violation:

Investigation: 830340 Comment Date: 08/30/2010

CES failed to maintain aisle space to allow for movement between drums, inspections of hazardous waste containers, and emergency response.

Recommended Corrective Action: CES must maintain adequate aisle space for all containers of hazardous waste being stored at its facility.

Track Number: 411353 **Compliance Due Date: 10/01/2010**
Violation Start Date: Unknown

30 TAC Chapter 328.63(c)

Alleged Violation:

Investigation: 830340 Comment Date: 08/30/2010
CES failed to register their scrap tire processing activities with TCEQ before starting operations.

Recommended Corrective Action: CES must cease processing scrap tires at its facility until it complies with TCEQ registration requirements.

Track Number: 411354 **Compliance Due Date: 10/01/2010**
Violation Start Date: Unknown

30 TAC Chapter 335.504
30 TAC Chapter 335.62
40 CFR Chapter 262.11

PERMIT 39048, P.P. II.1.h.
Incorporated Regulatory Requirements
State Regulations
30 TAC Chapter 335, Subchapter A: Industrial Solid Waste and Municipal Hazardous Waste

Alleged Violation:

Investigation: 830340 Comment Date: 08/30/2010
CES failed to conduct a hazardous waste determination and waste classification on the contents of the bottles located near the facility's closed laboratory.

Recommended Corrective Action: CES must provide documentation to the TCEQ that the samples observed outside the laboratory on April 1, 2010 either comply with the exemptions found in 40 CFR 261.4(d) and (e), or that a waste determination and characterization has been conducted on the wastes, and that they have been managed and disposed of accordingly.

Others

ASSOCIATED TO A NOTICE OF ENFORCEMENT

Track Number: 365678 **Compliance Due Date: 09/21/2009**
Violation Start Date: Unknown

30 TAC Chapter 335.6(c)

Alleged Violation:

Investigation: 707324 Comment Date: 05/20/2009
CES failed to update its NOR to accurately reflect current waste stream and waste management unit information.

Investigation: 830340 Comment Date: 09/08/2010
Failure to update Notice of Registration to reflect current operations at facility. This is a repeat violation that

was originally documented in TCEQ CCEDS Investigation No. 707324/Enforcement Case No. 37096.

Recommended Corrective Action: The facility is to make the following changes to its NOR through the TCEQ - Registration and Reporting Section in Austin:

* Correct waste stream information as follows: Twenty one of the waste streams listed on the NOR indicated that they were managed on site only, when they are actually managed both on site and off site. Two additional waste streams (9030601H and 9027207H) showed that they were managed off site only, when they are actually managed both on site and off site. Only waste stream 9025403H was correctly identified as being managed as both on site and off site. In addition, no waste management units are listed for waste streams 9027207H and 9030601H under the "Current Management Units" section of the NOR.

* Correct Waste Management Unit Information: Add the two sumps located in the truck wash and the drum cleaning areas, and the solvent recovery unit to the list of active waste management units on the NOR. CES must also clarify the waste streams stored in each waste management unit. Please note that any other modifications in waste management units at CES that were not observed by TCEQ investigators must also be added to the NOR.

* Correct Regulatory Status of Waste Management Units: The regulatory status of waste management units 101, 103, and 104 on the facility's NOR states that the units are RCRA permit exempt due to accumulation time. This status only applies to waste management units that manage hazardous wastes. If CES only manages nonhazardous wastes in these units (as is stated on the NOR), then the appropriate regulatory status of the units would be "nonhazardous regulated."

Track Number: 365747 **Compliance Due Date: 09/21/2009**

Violation Start Date: Unknown

30 TAC Chapter 324.6
40 CFR Chapter 279.22(c)

Alleged Violation:

Investigation: 707324 Comment Date: 08/05/2009

During the site investigation on November 5, 2008, two 55-gallon drums of used oil were being stored on a wooden pallet at the facility. Investigators also observed that neither the used oil processing nor the used oil feed tanks were labeled with the words "used oil."

Investigation: 830340 Comment Date: 08/31/2010

Failure to label used oil containers with the words "used oil." This is a repeat alleged violation first documented in TCEQ CCEDS Investigation No. 707324/Enforcement Case No. 37096.

Recommended Corrective Action: CES is to submit documentation to the TCEQ showing that the drums and tanks of used oil are properly marked/labeled.

Track Number: 372546 **Compliance Due Date: 09/21/2009**

Violation Start Date: Unknown

30 TAC Chapter 335.69(a)(2)
40 CFR Chapter 262.34(a)(2)

Alleged Violation:

Investigation: 707324 Comment Date: 08/05/2009

Hazardous waste containers were observed at CES on November 5, 2008, and on March 17-18, 2009, which were not labeled with an accumulation start date.

Investigation: 830340 Comment Date: 09/08/2010

Failure to mark hazardous waste containers with the words "hazardous waste' and the the date accumulation of hazardous waste began. This is a repeat alleged violation first documented in TCEQ CCEDS Investigation No. 707324/Enforcement Case No. 37096.

Recommended Corrective Action: CES is to clearly label all hazardous waste containers with the words "hazardous waste" and an accumulation start date.

Track Number: 372607 **Compliance Due Date: 09/21/2009**

Violation Start Date: Unknown

30 TAC Chapter 335.112(a)(8)
30 TAC Chapter 335.69(a)(1)(A)
40 CFR Chapter 262.34(a)(1)(i)
40 CFR Chapter 265.173(a)

Alleged Violation:

Investigation: 707324 Comment Date: 08/20/2009

On March 17, 2009, two totes of (D001) waste were observed in WMU 105 which were open.

Investigation: 830340 Comment Date: 08/31/2010

Failure to keep containers of hazardous waste closed except when adding or removing waste. This is a repeat alleged violation first documented in TCEQ CCEDS Investigation No. 707324/Enforcement Case No. 37096.

Recommended Corrective Action: CES is to ensure that all containers of hazardous wastes are kept closed except when adding or removing wastes.

Track Number: 374392 **Compliance Due Date: 09/21/2009**

Violation Start Date: Unknown

30 TAC Chapter 335.4(2)
30 TAC Chapter 335.4(3)

Alleged Violation:

Investigation: 707324 Comment Date: 08/21/2009

On December 6 and 16, 2008, CES failed to maintain its facility in a manner to prevent nuisance conditions and endangerment to public health and welfare when explosions involving the thermal oxidizer unit (December 6) and an associated scrubber (December 16) released MEK to the environment. The December 6, 2008, incident also sent flying debris onto neighboring residential properties.

Investigation: 830340 Comment Date: 08/31/2010

Failure to maintain facility in a manner which prevents threat of imminent discharge, the creation of a nuisance, and the endangerment of public health and welfare at its facility. This is a repeat alleged violation first documented in TCEQ CCEDS Investigation No. 707324/Enforcement Case No. 37096.

Recommended Corrective Action: CES is to submit to the TCEQ a written outline of the corrective actions that have been taken to prevent furture incidents like those which occurred in December 2008.

Signed _____ **Date** _____

Environmental Investigator

Signed _____ **Date** _____

Supervisor

Attachments: (in order of final report submittal)

____Enforcement Action Request (EAR)

____Letter to Facility (specify type) : _____

Investigation Report

____Sample Analysis Results

____Manifests

____Notice of Registration

____Maps, Plans, Sketches

____Photographs

____Correspondence from the facility

____Other (specify) :

_____

_____