

Executive Summary – Enforcement Matter – Case No. 58099
KB MARINE INDUSTRY, LLC and Khang Trong Bui
RN106905193
Docket No. 2019-1159-MLM-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

MLM - AIR, IHW, MSW, WQ

Small Business:

No

Location(s) Where Violation(s) Occurred:

KB Marine Industry, 3885-A South Martin Luther King Jr. Boulevard, Port Arthur, Jefferson County

Type of Operation:

Scrap metal recycling and unauthorized industrial waste disposal

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: April 22, 2022

Comments Received: No

Penalty Information

Total Penalty Assessed: \$45,233

Amount Deferred for Financial Inability to Pay: \$8,174

Confidential information, which may include financial or medical information, has been provided to the Commission for their consideration.

Total Paid to General Revenue: \$103

Total Due to General Revenue: \$36,956

Payment Plan: 11 payments of \$100 each, then 12 payments of \$695 each, then 12 payments of \$2,293 each

Compliance History Classifications:

KB MARINE INDUSTRY, LLC

Person/CN - Unsatisfactory

Site/RN - Unsatisfactory

Khang Trong Bui:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

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RN106905193
Docket No. 2019-1159-MLM-E

Investigation Information

Complaint Date(s): August 9, 2018

Complaint Information: Alleged there was a large fire at the facility revealing scattered rubbish, discarded and leaking paint, and MEK containers.

Date(s) of Investigation: August 23, 2018 through September 14, 2018 and June 3, 2019 through June 6, 2019

Date(s) of NOE(s): July 24, 2019

Violation Information

1. Caused, suffered, allowed, or permitted the unauthorized storage and disposal of municipal solid waste ("MSW") [30 TEX. ADMIN. CODE § 330.15(a) and (c)].
2. Caused, suffered, allowed, or permitted outdoor burning within the State of Texas [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)].
3. Caused, suffered, allowed, or permitted the disposal of industrial solid waste ("ISW") at an unauthorized facility [30 TEX. ADMIN. CODE § 335.2(b)].
4. Failed to obtain authorization to discharge stormwater associated with industrial activities [30 TEX. ADMIN. CODE § 281.25(a)(4), TEX. WATER CODE § 26.121, and 40 CODE OF FEDERAL REGULATIONS ("C.F.R.") § 122.26(c)].
5. Failed to prevent the discharge of ISW into or adjacent to any water in the state [30 TEX. ADMIN. CODE § 328.3(a)(6) and TEX. WATER CODE § 26.121(a)(1)].
6. Failed to immediately abate, contain, and clean up a discharge or spill [30 TEX. ADMIN. CODE § 327.5(a) and TEX. WATER CODE § 26.266(a) and 40 C.F.R. § 279.22(d)(3)].
7. Failed to ensure that all containers used to store used oil are maintained in good condition and not leaking [30 TEX. ADMIN. CODE § 324.6 and 40 C.F.R. § 279.22(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondents to:

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a. Immediately:

- i. Cease any additional disposal of unauthorized wastes at the Site;
- ii. Cease all outdoor burning activities; and
- iii. Cease all discharges of ISW and MSW into or adjacent to any water in the state.

b. Within 30 days:

- i. Develop and implement procedures designed to ensure that all ISW, industrial and hazardous waste, and MSW is disposed of at the appropriate respective authorized facilities;
- ii. Develop and implement a stormwater pollution prevention plan to comply with the requirements of Texas Pollutant Discharge Elimination System General Permit No. TXR050000;
- iii. Submit a Notice of Intent through the State of Texas Environmental Electronic Reporting System to obtain authorization to discharge stormwater;
- iv. Remove all water from the secondary containment for the used oil tank and begin maintaining all containers used to store used oil in good condition; and
- v. Repair or replace the rust-damaged used oil tank.

c. Within 60 days:

- i. Remove all MSW from the Site, including, but not limited to all empty oil cans, debris, discarded water bottles, and general household garbage, and dispose of it at an authorized facility;
- ii. Remove all ISW from the Site, including, but not limited to all fiberglass wastes, empty paint cans, paint wastes, and all ash generated from outdoor burning, and dispose of it at an authorized facility;
- iii. Cleanup and remove the used oil-contaminated soil and dispose of it at an authorized facility; and
- iv. Submit a report which includes a summary of remediation activities that took place, confirming that all contaminated soil at the Site has been properly remediated. Remediation activities shall address all areas where stained soil and released used oil were observed at the Site. The report shall include analytical results of soil confirmation

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sampling which characterizes the effectiveness of contaminated soil removal in all contaminated areas and documentation that contaminated soils have been disposed of in an authorized manner.

d. Within 75 days, submit written certification to demonstrate compliance with a., b., and c.

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Ken Moller, Enforcement Division, Enforcement Team 7, MC 219, (512) 239-6111; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Khang Trong Bui, Director, KB MARINE INDUSTRY, LLC, 1111 Jefferson Drive, Port Arthur, Texas 77640-0639

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	29-Jul-2019			
	PCW	12-Sep-2019	Screening	5-Aug-2019	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	KB MARINE INDUSTRY, LLC and Khang Trong Bui				
Reg. Ent. Ref. No.	RN106905193				
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	58099	No. of Violations	5		
Docket No.	2019-1159-MLM-E	Order Type	Findings		
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No		
Multi-Media	Air, Municipal Solid Waste, Water Quality, and Used Oil	Enf. Coordinator	Ken Moller		
		EC's Team	Enforcement Team 7		
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$25,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$28,750
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	55.0% Adjustment	Subtotals 2, 3, & 7	\$15,812
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Notes	Enhancement for Unsatisfactory Performer classification, two previous Orders containing denials of liability, and one written NOV with same/similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondents do not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$3,792	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$43,936	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$44,562
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.1% Adjustment	\$51
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to capture the avoided cost of compliance associated with Violation No. 2.
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Final Penalty Amount	\$44,613
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$44,613
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DEFERRAL	0.0% Reduction Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral not offered for Findings Orders.
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PAYABLE PENALTY	\$44,613
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Screening Date 5-Aug-2019

Docket No. 2019-1159-MLM-E

PCW

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui

Policy Revision 4 (April 2014)

Case ID No. 58099

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106905193

Media Industrial and Hazardous Waste

Enf. Coordinator Ken Moller

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 45%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for Unsatisfactory Performer classification, two previous Orders containing denials of liability, and one written NOV with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 55%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 55%

Screening Date 5-Aug-2019 **Docket No.** 2019-1159-MLM-E **PCW**
Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui *Policy Revision 4 (April 2014)*
Case ID No. 58099 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN106905193
Media Industrial and Hazardous Waste
Enf. Coordinator Ken Moller

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 330.15(a) and (c)
Violation Description Caused, suffered, allowed, or permitted the unauthorized storage and disposal of municipal solid waste ("MSW"). Specifically, approximately 10 cubic yards of MSW consisting of empty oil cans, debris, discarded water bottles, and general household garbage was disposed of on the ground at the Site.
Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

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

Adjustment \$23,750
 \$1,250

Violation Events

Number of Violation Events: 1 63 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One quarterly event is recommended from the June 3, 2019 record review to the August 5, 2019 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$11 **Violation Final Penalty Total** \$1,940
This violation Final Assessed Penalty (adjusted for limits) \$1,940

Economic Benefit Worksheet

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui
Case ID No. 58099
Reg. Ent. Reference No. RN106905193
Media Violation No. Industrial and Hazardous Waste
 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$131	23-Aug-2018	24-May-2020	1.75	\$11	n/a	\$11
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove all MSW from the Site and dispose of it at an authorized facility. The Date Required is the initial investigation date, and the Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$131

TOTAL

\$11

Screening Date 5-Aug-2019

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PCW

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui

Policy Revision 4 (April 2014)

Case ID No. 58099

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106905193

Media Industrial and Hazardous Waste

Enf. Coordinator Ken Moller

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)

Violation Description Caused, suffered, allowed, or permitted outdoor burning within the State of Texas. Specifically, approximately one cubic yard of fiberglass was burned at the Site.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

1 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$51

Violation Final Penalty Total \$1,940

This violation Final Assessed Penalty (adjusted for limits) \$1,940

Economic Benefit Worksheet

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui
Case ID No. 58099
Reg. Ent. Reference No. RN106905193
Media Violation No. Industrial and Hazardous Waste
 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Delayed cost calculation for Violation No. 2 is included in the economic benefit calculation for Violation No. 3.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs	\$51	22-Aug-2018	23-Aug-2018	0.00	\$0	\$51	\$51
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to dispose of approximately one cubic yard of industrial solid waste ("ISW") at an authorized facility, rather than burning. The Date Required is one day prior to the initial investigation date, and the Final Date is the initial investigation date.

Approx. Cost of Compliance \$51

TOTAL \$51

Screening Date 5-Aug-2019

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PCW

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui

Policy Revision 4 (April 2014)

Case ID No. 58099

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106905193

Media Industrial and Hazardous Waste

Enf. Coordinator Ken Moller

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 335.2(b)

Violation Description Caused, suffered, allowed, or permitted the disposal of ISW at an unauthorized facility. Specifically, the Respondents disposed of approximately 2,908 cubic yards of fiberglass, empty paint cans, and paint waste at the Site.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual	x		
Potential				

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification				

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 3 63 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$11,250

Three monthly events are recommended from the June 3, 2019 record review to the August 5, 2019 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,597

Violation Final Penalty Total \$17,457

This violation Final Assessed Penalty (adjusted for limits) \$17,457

Economic Benefit Worksheet

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui
Case ID No. 58099
Reg. Ent. Reference No. RN106905193
Media Violation No. Industrial and Hazardous Waste
 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$500	23-Aug-2018	24-May-2020	1.75	\$44	n/a	\$44
Remediation/Disposal	\$40,529	23-Aug-2018	24-May-2020	1.75	\$3,553	n/a	\$3,553
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement procedures designed to prevent the disposal of wastes at unauthorized facilities. Date Required is the initial investigation date. Final Date is the estimated date of compliance.

Estimated cost to remove all ISW from the Site and waterway and dispose of it at an authorized facility (\$40,529). The Date Required is the initial investigation date, and the Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$41,029

TOTAL \$3,597

Screening Date 5-Aug-2019

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PCW

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui

Policy Revision 4 (April 2014)

Case ID No. 58099

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106905193

Media Industrial and Hazardous Waste

Enf. Coordinator Ken Moller

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), Tex. Water Code § 26.121, and 40 Code of Federal Regulations § 122.26(c)

Violation Description Failed to obtain authorization to discharge stormwater associated with industrial activities. Specifically, the Respondents did not obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit No. TXR050000.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3 63 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

Three monthly events are recommended from the June 3, 2019 record review to the August 5, 2019 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$133

Violation Final Penalty Total \$5,819

This violation Final Assessed Penalty (adjusted for limits) \$5,819

Economic Benefit Worksheet

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui
Case ID No. 58099
Reg. Ent. Reference No. RN106905193
Media Violation No. Industrial and Hazardous Waste
 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$225	3-Jun-2019	24-May-2020	0.98	\$11	n/a	\$11
Other (as needed)	\$2,500	3-Jun-2019	24-May-2020	0.98	\$122	n/a	\$122

Notes for DELAYED costs

Actual cost to submit a Notice of Intent to obtain authorization to discharge stormwater (\$225). The Date Required is the investigation date, and the Final Date is the estimated date of compliance.

Estimated delayed cost to develop and implement a stormwater pollution prevention plan (\$2,500). The Date Required is the investigation date, and the Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$2,725

TOTAL \$133

Screening Date 5-Aug-2019

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PCW

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui

Policy Revision 4 (April 2014)

Case ID No. 58099

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106905193

Media Industrial and Hazardous Waste

Enf. Coordinator Ken Moller

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 328.3(a)(6) and Tex. Water Code § 26.121(a)(1)

Violation Description

Failed to prevent the discharge of ISW into or adjacent to any water in the state. Specifically, ISW consisting of pieces of fiberglass boat hulls cut from decommissioned US Navy vessels was strewn about the Site, as well as onto the shoreline and subsurface of the Sabine-Neches Waterway.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 3

63 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$11,250

Three monthly events are recommended from the June 3, 2019 record review to the August 5, 2019 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$17,457

This violation Final Assessed Penalty (adjusted for limits) \$17,457

Economic Benefit Worksheet

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui
Case ID No. 58099
Reg. Ent. Reference No. RN106905193
Media Violation No. Industrial and Hazardous Waste
 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic Benefit calculation included with Violation No. 3.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

TOTAL \$0



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	29-Jul-2019	Screening	5-Aug-2019	EPA Due	
	PCW	12-Sep-2019				

RESPONDENT/FACILITY INFORMATION			
Respondent	KB MARINE INDUSTRY, LLC and Khang Trong Bui		
Reg. Ent. Ref. No.	RN106905193		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	58099	No. of Violations	2	
Docket No.	2019-1159-MLM-E	Order Type	Findings	
Media Program(s)	Used Oil	Government/Non-Profit	No	
Multi-Media	Industrial and Hazardous Waste	Enf. Coordinator	Ken Moller	
	Municipal Solid Waste, Air, and Water Quality	EC's Team	Enforcement Team 7	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$400
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	55.0% Adjustment	Subtotals 2, 3, & 7	\$220
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Notes: Enhancement for Unsatisfactory Performer classification, two previous Orders containing denials of liability, and one written NOV with same/similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$154	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$1,556	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$620
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0% Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$620
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$620
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for Findings Orders.

PAYABLE PENALTY	\$620
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Screening Date 5-Aug-2019

Docket No. 2019-1159-MLM-E

PCW

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui

Policy Revision 4 (April 2014)

Case ID No. 58099

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106905193

Media Used Oil

Enf. Coordinator Ken Moller

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 45%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for Unsatisfactory Performer classification, two previous Orders containing denials of liability, and one written NOV with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 55%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 55%

Screening Date 5-Aug-2019 **Docket No.** 2019-1159-MLM-E **PCW**
Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui *Policy Revision 4 (April 2014)*
Case ID No. 58099 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN106905193
Media Used Oil
Enf. Coordinator Ken Moller

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 327.5(a) and Tex. Water Code § 26.266(a) and 40 Code of Federal Regulations ("C.F.R.") § 279.22(d)(3)
Violation Description Failed to immediately abate, contain, and clean up a discharge or spill. Specifically, cleanup was not immediately conducted on a discharge of used oil that affected approximately 1.6 total cubic yards of soil at the Site.
Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0.0%

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

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 1 63 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$250

One quarterly event is recommended from the June 3, 2019 record review date to the August 5, 2019 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$250

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$93 **Violation Final Penalty Total** \$388

This violation Final Assessed Penalty (adjusted for limits) \$388

Economic Benefit Worksheet

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui
Case ID No. 58099
Reg. Ent. Reference No. RN106905193
Media Used Oil
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$56	23-Aug-2018	24-May-2020	1.75	\$5	n/a	\$5
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	23-Aug-2018	24-May-2020	1.75	\$88	n/a	\$88

Notes for DELAYED costs

Estimated cost to cleanup and remove the contaminated soil and dispose of it at an authorized facility (\$56). The Date Required is the initial investigation date and the Final Date is the estimated date of compliance.

Estimated cost to submit a report detailing the cause of the contamination and the corrective actions completed to clean it up (\$1,000). The Date Required is the initial investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,056

TOTAL \$93

Screening Date 5-Aug-2019

Docket No. 2019-1159-MLM-E

PCW

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui

Policy Revision 4 (April 2014)

Case ID No. 58099

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106905193

Media Used Oil

Enf. Coordinator Ken Moller

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 324.6 and 40 C.F.R. § 279.22(b)

Violation Description

Failed to ensure that all containers used to store used oil are maintained in good condition and not leaking. Specifically, the used oil tank was rusted, and the secondary containment vessel for the used oil tank was dented and partially filled with water.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 3.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$4,850

\$150

Violation Events

Number of Violation Events 1

63 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$150

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$150

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$61

Violation Final Penalty Total \$233

This violation Final Assessed Penalty (adjusted for limits) \$233

Economic Benefit Worksheet

Respondent KB MARINE INDUSTRY, LLC and Khang Trong Bui
Case ID No. 58099
Reg. Ent. Reference No. RN106905193
Media Used Oil
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment	\$500	23-Aug-2018	24-May-2020	1.75	\$3	\$58	\$61
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated delayed cost to repair the used oil storage tank and secondary containment vessel. The Date Required is the initial investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$61

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TCEQ Compliance History Report

Compliance History Report for CN604379578, RN106905193, Rating Year 2018 which includes Compliance History (CH) components from September 1, 2013, through August 31, 2018.

Customer, Respondent, or Owner/Operator: CN604379578, KB MARINE INDUSTRY, LLC **Classification:** UNSATISFACTORY **Rating:** 85.00

Regulated Entity: RN106905193, KB Marine Industry **Classification:** UNSATISFACTORY **Rating:** 85.00

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 3885-A South Martin Luther King Jr. Drive, Port Arthur, Jefferson County, Texas 77640

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s):

**INDUSTRIAL AND HAZARDOUS WASTE
NONPERMITTED ID NUMBER R10106905193**

Compliance History Period: September 01, 2014 to August 31, 2019 **Rating Year:** 2019 **Rating Date:** 09/01/2019

Date Compliance History Report Prepared: September 12, 2019

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: September 12, 2014 to September 12, 2019

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

Name: Ken Moller

Phone: (512) 239-6111

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five-year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 12/20/2014 ADMINORDER 2014-0713-WQ-E (1660 Order-Agreed Order With Denial)
Classification: Major
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(c)
Description: failed to obtain authorization to discharge stormwater associated with industrial activities under TPDES General Permit TXR050000, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c).
- 2 Effective Date: 10/25/2016 ADMINORDER 2016-0409-MSW-E (1660 Order-Agreed Order With Denial)
Classification: Moderate
Citation: 30 TAC Chapter 324, SubChapter A 324.6
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(d)
Description: Failure to immediately clean up and properly dispose of any spills of used oil.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

Compliance History Report for CN603794660, RN106905193, Rating Year 2018 which includes Compliance History (CH) components from September 1, 2013, through August 31, 2018.

Customer, Respondent, or Owner/Operator: CN603794660, Bui, Khang Trong **Classification:** SATISFACTORY **Rating:** 45.00

Regulated Entity: RN106905193, KB Marine Industry **Classification:** SATISFACTORY **Rating:** 45.00

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 3885-A South Martin Luther King Jr. Drive, Port Arthur, Jefferson County, Texas 77640

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s):

**INDUSTRIAL AND HAZARDOUS WASTE
NONPERMITTED ID NUMBER R10106905193**

Compliance History Period: September 01, 2014 to August 31, 2019 **Rating Year:** 2019 **Rating Date:** 09/01/2019

Date Compliance History Report Prepared: September 12, 2019

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: September 12, 2014 to September 12, 2019

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

Name: Ken Moller

Phone: (512) 239-6111

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 12/20/2014 ADMINORDER 2014-0713-WQ-E (1660 Order-Agreed Order With Denial)
Classification: Major
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(c)
Description: failed to obtain authorization to discharge stormwater associated with industrial activities under TPDES General Permit TXR050000, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c).
- 2 Effective Date: 10/25/2016 ADMINORDER 2016-0409-MSW-E (1660 Order-Agreed Order With Denial)
Classification: Moderate
Citation: 30 TAC Chapter 324, SubChapter A 324.6
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(d)
Description: Failure to immediately clean up and properly dispose of any spills of used oil.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- 1 Date: 11/16/2018 (1512234)
- Self Report? NO Classification: Moderate
- Citation: 30 TAC Chapter 327 327.5(a)
- Description: Failure to clean up a spill or discharge. EIC: B13//(2)(D)Mod
- Self Report? NO Classification: Moderate
- Citation: 40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(a)
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(b)
- Description: Failure to properly manage used oil, specifically maintenance of the used oil tank.
EIC: B18.e.8//(2)(G)Mod
- Self Report? NO Classification: Moderate
- Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)
- Description: Failure to comply with the General Prohibitions for the collection, storage,
transportation, processing or disposal of Municipal Solid Waste. EIC B.18.e(7)
// (2)(D)MOD

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KB MARINE INDUSTRY, LLC
AND KHANG TRONG BUI
RN106905193**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2019-1159-MLM-E**

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding KB MARINE INDUSTRY, LLC and Khang Trong Bui (the "Respondents") under the authority of TEX. HEALTH & SAFETY CODE chs. 361, 371, and 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents presented this Order to the Commission.

The Respondents understand that they have certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Order, the Respondents agree to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon the Respondents.

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

I. FINDINGS OF FACT

1. Khang Trong Bui owns and KB MARINE INDUSTRY, LLC operates a scrap metal recycling and unauthorized industrial waste disposal site located at 3885-A South Martin Luther King Jr. Drive in Port Arthur, Jefferson County, Texas (the "Site"). The Site involves or involved the management of industrial and hazardous waste ("IHW") and municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361, consists or consisted of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12), involves or involved the management of used oil as defined in TEX. HEALTH & SAFETY CODE ch. 371, and is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).

2. During investigations conducted from August 23, 2018 to September 14, 2018 and June 3, 2019 to June 6, 2019, an investigator documented that the Respondents:
 - a. Disposed of approximately 10 cubic yards of MSW consisting of empty oil cans, debris, discarded water bottles, and general household garbage on the ground at the Site;
 - b. Burned approximately one cubic yard of fiberglass at the Site;
 - c. Disposed of approximately 2,908 cubic yards of industrial solid waste ("ISW") consisting of fiberglass, empty paint cans, and paint waste at the Site;
 - d. Did not obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR050000;
 - e. Did not prevent the discharge of ISW consisting of pieces of fiberglass boat hulls cut from decommissioned US Navy vessels which was strewn about the Site, as well as onto the shoreline and subsurface of the Sabine-Neches Waterway;
 - f. Did not immediately clean up a discharge of used oil that affected approximately 1.6 total cubic yards of soil at the Site; and
 - g. Did not maintain containers used to store used oil in good condition. The used oil tank was rusted and the secondary containment vessel for the used oil tank was dented and partially filled with water.

II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE chs. 361, 371, and 382 and TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a, the Respondents caused, suffered, allowed, or permitted the unauthorized storage and disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(a) and (c).
3. As evidenced by Finding of Fact No. 2.b, the Respondents caused, suffered, allowed, or permitted outdoor burning within the State of Texas, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. As evidenced by Finding of Fact No. 2.c, the Respondents caused, suffered, allowed, or permitted the disposal of ISW at an unauthorized facility, in violation of 30 TEX. ADMIN. CODE § 335.2(b).

5. As evidenced by Finding of Fact No. 2.d, the Respondents failed to obtain authorization to discharge stormwater associated with industrial activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TEX. WATER CODE § 26.121, and 40 CODE OF FEDERAL REGULATIONS ("C.F.R.") § 122.26(c).
6. As evidenced by Finding of Fact No. 2.e, the Respondents failed to prevent the discharge of ISW into or adjacent to any water in the state, in violation of 30 TEX. ADMIN. CODE § 328.3(a)(6) and TEX. WATER CODE § 26.121(a)(1).
7. As evidenced by Finding of Fact No. 2.f, the Respondents failed to immediately abate, contain, and clean up a discharge or spill, in violation of 30 TEX. ADMIN. CODE § 327.5(a) and TEX. WATER CODE § 26.266(a) and 40 C.F.R. § 279.22(d)(3).
8. As evidenced by Finding of Fact No. 2.g, the Respondents failed to ensure that all containers used to store used oil are maintained in good condition and not leaking, in violation of 30 TEX. ADMIN. CODE § 324.6 and 40 C.F.R. § 279.22(b).
9. Pursuant to TEX. WATER CODE § 7.051, the TCEQ has the authority to assess an administrative penalty against the Respondents for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of \$45,233 is justified by the facts recited in this order, and considered in light of factors set forth in TEX. WATER CODE § 7.053. The Revenue Operations Section of TCEQ's Financial Administration Division reviewed financial documentation submitted by the Respondents and determined that the Respondents are unable to pay all or part of the penalty. Therefore, \$8,174 of the penalty is deferred contingent upon the Respondents' compliance with all the terms of this Order and shall be waived only upon full compliance with this Order. If the Respondents fail to comply with any requirement of this Order, including any payment schedule, the Executive Director may require the Respondents to pay all or part of the deferred penalty.

The Respondents paid \$103 of the undeferred penalty. The remaining amount of \$36,956 of the undeferred penalty shall be paid in 11 monthly payments of \$100 each, then followed by 12 monthly payments of \$695 each, and then followed by 12 monthly payments of \$2,293 each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If the Respondents fail to comply with the payment requirements of this Order, including the payment schedule, the Executive Director may accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. The Respondents' failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by the Respondents to timely and satisfactorily comply with all the terms of this Order and the Executive Director may demand payment of all or part of the deferred penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondents are assessed a penalty as set forth in Conclusion of Law No. 10 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondents' compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: KB MARINE INDUSTRY, LLC and Khang Trong Bui, Docket No. 2019-1159-MLM-E" to:

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

2. The Respondents are jointly and severally liable for the violations documented in this Order and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Order.
3. The Respondents shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order:
 - i. Cease any additional disposal of unauthorized wastes at the Site;
 - ii. Cease all outdoor burning activities; and
 - iii. Cease all discharges of ISW and MSW into or adjacent to any water in the state.
 - b. Within 30 days after the effective date of this Order:
 - i. Develop and implement procedures designed to ensure that all ISW, IHW, and MSW is disposed of at the appropriate respective authorized facilities, in accordance with 30 TEX. ADMIN. CODE §§ 330.15 and 335.2;
 - ii. Develop and implement a stormwater pollution prevention plan to comply with the requirements of TPDES General Permit No. TXR050000;

- iii. Submit a Notice of Intent through the State of Texas Environmental Electronic Reporting System to obtain authorization to discharge stormwater;
 - iv. Remove all water from the secondary containment for the used oil tank and begin maintaining all containers used to store used oil in good condition, in accordance with 30 TEX. ADMIN. CODE § 324.6; and
 - v. Repair or replace the rust-damaged used oil tank, in accordance with 30 TEX. ADMIN. CODE § 324.6.
- c. Within 60 days after the effective date of this Order:
- i. Remove all MSW from the Site, including, but not limited to all empty oil cans, debris, discarded water bottles, and general household garbage, and dispose of it at an authorized facility, in accordance with 30 TEX. ADMIN. CODE § 330.15;
 - ii. Remove all ISW from the Site, including, but not limited to all fiberglass wastes, empty paint cans, paint wastes, and all ash generated from outdoor burning, and dispose of it at an authorized facility, in accordance with 30 TEX. ADMIN. CODE § 335.2;
 - iii. Cleanup and remove the used oil-contaminated soil and dispose of it at an authorized facility, in accordance with 30 TEX. ADMIN. CODE § 327.5 and 40 C.F.R. § 279.22; and
 - iv. Submit a report to the addresses listed in Ordering Provision No. 3.d, which includes a summary of remediation activities that took place, confirming that all contaminated soil at the Site has been properly remediated. Remediation activities shall address all areas where stained soil and released used oil were observed at the Site. The report shall include analytical results of soil confirmation sampling which characterizes the effectiveness of contaminated soil removal in all contaminated areas and documentation that contaminated soils have been disposed of in an authorized manner.
- d. Within 75 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a, 3.b, and 3.c. The certification shall be signed by the Respondents 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1830

4. All relief not expressly granted in this Order is denied.
5. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
6. If the Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondents' failure to comply is not a violation of this Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents have not complied with one or more of the terms in this Order.

9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. This Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
11. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
12. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

7/5/2023

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

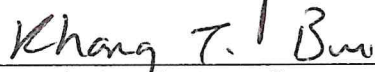
In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

Aug 20, 2022

Date



Name (Printed or typed)
Authorized Representative of
KB MARINE INDUSTRY, LLC

Managing Member

Title

If mailing address has changed, please check this box and provide the new address below:

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

7/5/2023

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Signature

Aug 20, 2022

Date



Name (Printed or typed)
Authorized Representative of
Khang Trong Bui

Managing Member

Title

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