

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 19, 2015

The Honorable A.C. Cuellar, Jr., Commissioner Precinct 1
Hidalgo County
1902 Joe Stephens Avenue, Suite No. 101
Weslaco, Texas 78599

Re: Revised Proposed Agreed Order
Hidalgo County; RN107448920
Docket No. 2014-1094-MSW-E; Enforcement Case No. 49031
FOR SETTLEMENT PURPOSES ONLY

Dear Commissioner Cuellar:

In the cover letter for the proposed agreed order mailed out to Hidalgo County on September 16, 2014, Hidalgo County was given an opportunity to propose a Supplemental Environmental Project ("SEP") to offset a portion of the assessed penalty. Your proposal for a SEP has been reviewed and has been incorporated in the enclosed revised proposed agreed order. Please note that agreed orders are subject to final approval by the Commission and the SEP must not be implemented until the Commission has approved the agreed order.

If you agree with the order as proposed, please sign and return this order with an original signature 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

You will be notified when your order has been approved. Enclosed for your convenience is a return envelope. **If the signed order is not mailed and postmarked by March 3, 2015**, we will assume that you have elected to participate in the more extended enforcement process described in previous correspondence, and we will proceed accordingly. Your case will be forwarded to the Litigation Division and this settlement offer, including the penalty deferral and possibly the SEP, will no longer be available.

The Honorable A.C. Cuellar, Jr.
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If you have any questions regarding these matters, please contact Ms. Margarita Dennis of my staff at (817) 588-5892.

Sincerely,

A handwritten signature in cursive script that reads "Mark Oliver". The signature is written in dark ink and is positioned above the typed name.

Mark Oliver, Manager
Enforcement Division
Texas Commission on Environmental Quality

MO/md

Enclosures: Revised Proposed Agreed Order, Return Envelope

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
HIDALGO COUNTY
RN107448920

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2014-1094-MSW-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Hidalgo County ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates an unauthorized citizens' collection station located approximately 0.25 miles north of the intersection of Mile 1.5 West and Mile 11 in Weslaco, Hidalgo County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 13, 2014.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seventeen Thousand Eight Hundred Thirteen Dollars (\$17,813) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Three Thousand Five Hundred Sixty-Two Dollars

(\$3,562) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Specifically, Fourteen Thousand Two Hundred Fifty-One Dollars (\$14,251) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the used or scrap tires were removed from the Facility by September 30, 2013.
10. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers, in violation of 30 TEX. ADMIN. CODE § 328.60(a), as documented during an investigation conducted on September 20, 2013. Specifically, approximately 2,260 used or scrap tires were on the ground at the Facility.
2. Failed to prevent the unauthorized disposal of MSW at the Facility, in violation of 30 TEX. ADMIN. CODE §§ 330.11(e) and 330.15(c), as documented during an investigation conducted on September 20, 2013. Specifically, the Respondent stored, processed, and disposed of approximately 4,713 cubic yards of household waste, shingles, petroleum based material, and tar-like material without obtaining a permit or other authorization from the TCEQ or providing notification to the Executive Director of the intent to operate a citizens' collection station.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Hidalgo County, Docket No. 2014-1094-MSW-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 Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 Jurisdiction and Stipulations section that describes the penalty and SEP above, Fourteen Thousand Two Hundred Fifty-One Dollars (\$14,251) of the assessed administrative penalty shall be offset with the condition that the SEP defined in Attachment A, incorporated herein by reference, is implemented by the Respondent. The Respondent's obligation to pay the conditionally offset portion of the administratively penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately after the effective date of this Agreed Order, cease disposing of any additional waste at the Facility.
 - b. Within 30 days after the effective date of this Agreed Order, submit a Notice of Intent to operate a citizens' collection station to:

Municipal Solid Waste Permits Section, MC 124
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Respond completely and adequately, as determined by TCEQ, to any requests for additional information concerning the Notice of Intent and address any deficiencies identified by the Municipal Solid Waste Permits Section within 30 days of such request or by any deadline specified in writing; or

- c. Within 90 days after the effective date of this Agreed Order, remove all of the waste at the Facility and dispose of it at an authorized facility.
- d. Within 105 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a and 3.b., or 3.a. and 3.c. The certification shall be notarized by a State of Texas Notary Public and 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
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the

Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed 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.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed 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 Agreed 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.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, 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

Date

Name (Printed or typed)
Authorized Representative of
Hidalgo County

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Attachment A

Docket Number: 2014-1094-MSW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

| | |
|-----------------------------------|---|
| Respondent: | Hidalgo County |
| Penalty Amount: | Fourteen Thousand Two Hundred Fifty-One Dollars (\$14,251) |
| SEP Offset Amount: | Fourteen Thousand Two Hundred Fifty-One Dollars (\$14,251) |
| Type of SEP: | Contribution to a Third-Party Pre-Approved SEP |
| Third-Party Administrator: | Texas Association of Resource Conservation and Development Areas, Inc. |
| Project Name: | <i>Tire Collection Events and Cleanup of Abandoned Tire Sites</i> |
| Location of SEP: | Hidalgo County - Rio Grande River Basin, Gulf Coast Aquifer |

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. **Project Description**

a. **Project**

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Texas Association of Resource Conservation and Development Areas, Inc. (“RC&D”)** for the *Tire Collection Events and Cleanup of Abandoned Tire Sites* project. The contribution will be used in accordance with the SEP Agreement between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to coordinate with local city and county government officials and private entities (“Partner Entities”) to conduct tire collection events where residents will be able to drop off tires for proper disposal or recycling (“Collection Events”), or to clean sites where tires have been disposed of illegally (“Site Cleanups”).

Texas RC&D shall ensure that collected tires, debris, and waste are properly transported to and disposed at an authorized disposal site, and if a licensed hauler is needed for tires or other regulated waste collected from sites, Texas RC&D shall ensure that only properly licensed haulers are used for transport and disposal of tires and regulated wastes. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Hidalgo County
Agreed Order - Attachment A

All dollars contributed will be used solely for the direct cost of the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that is not able to be spent on the specifically identified SEP may, at the discretion of the Executive Director ("ED"), be applied to another pre-approved SEP.

The Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

This SEP will provide an environmental benefit by providing communities with a free and convenient means for safe and proper disposal of tires and by reducing the dangers and health threats associated with illegally dumped tires.

The health risks associated with illegal dumping are significant. Areas used for illegal tire dumping may be easily accessible to people, especially children, who are vulnerable to the physical hazards posed by abandoned tires. Rodents, insects, and other vermin attracted to dump sites may also pose health risks. Tire dump sites which contain scrap tires pose an ideal breeding ground for mosquitoes, which can breed 100 times faster in the warm, stagnant water standing in scrap tire casings. Severe illnesses, including West Nile Virus, have been attributed to disease-carrying mosquitoes. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of air, surface water, ground water, and soil. In addition, neighborhoods have been evacuated and property damage has been significant due to tire dump sites that caught fire. Illegal tire dumping can also impact drainage of runoff, making areas more susceptible to flooding when wastes block waterways. Open burning at tire dump sites can cause forest fires and erosion as fires burn away trees and undergrowth. Tire dumping has a negative impact on trees and wildlife, and runoff from tire dumpsites may contain chemicals that can contaminate wells and surface water used for drinking.

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **Texas Association of RC&D SEP** and shall mail the contribution with a copy of the Agreed Order to:

Hidalgo County
Agreed Order - Attachment A

Texas Association of RC&D Areas, Inc.
Attn.: Jerry Pearce, Executive Director
P.O. Box 2533
Victoria, Texas 77902

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the Enforcement SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount, as described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP. The Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP and/or project, made by or on behalf of the Respondent must include a clear statement that **the project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

6. Recognition

The Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.