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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0237-MLM-E TCEQ ID: RN102869484 CASE NO.: 32665
RESPONDENT NAME: I. 35 Sandpit, Inc.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: I-35 Sand Pit, 4372 South Interstate 35 West, Alvarado, Johnson County</p> <p>TYPE OF OPERATION: Sand mining and wood recycling</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: Dust complaints were received on October 6, 2006 and February 22, 2007. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: Complaints were received, but the complainants have not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on September 10, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Marlin Bullard, Enforcement Division, Enforcement Team 7, MC R-09, (254) 761-3038, Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 Respondent: Mr. Finis Shipman, President, I. 35 Sandpit, Inc., P.O. Box 611, Alvarado, Texas 76009 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Dates of Complaints Relating to this Case: October 6, 2006 and February 22, 2007</p> <p>Dates of Investigations Relating to this Case: October 12, 2006 and February 22, 2007</p> <p>Date of NOV/NOE Relating to this Case: January 4, 2007 (NOE)</p> <p>Background Facts: These were complaint investigations. Four violations were documented.</p> <p>AIR/WASTE</p> <p>1) Failed to ensure that all in-plant roads are paved and cleaned or sprinkled with water and/or chemicals as necessary to achieve maximum control of dust emissions. Specifically, during the investigations, it was documented that dust emissions from the Site's roads were leaving the Site [30 TEX. ADMIN. CODE § 106.149(5) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failed to obtain authorization for the storage and/or processing of municipal solid waste. Specifically, during the investigation, it was documented that the Respondent disposed of approximately 7,500 cubic yards of municipal solid waste from off site sources that was not included on its Notice of Intent including wood, wood mulch and soil at the Site [30 TEX. ADMIN. CODE § 330.7(a)].</p> <p>3) Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors. Specifically, the Respondent failed to provide financial assurance for its recycling operations under its Notice of Intent [30 TEX. ADMIN. CODE § 328.5(d)].</p>	<p>Total Assessed: \$8,560</p> <p>Total Deferred: \$1,712 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$6,848</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease any unauthorized burning activities and implement measures to prevent the discharge of air contaminants from the Site;</p> <p>b. Immediately upon the effective date of this Agreed Order, cease emissions of dust from the Site;</p> <p>c. Within 15 days after the effective date of this Agreed Order, implement procedures to prevent the unauthorized storage and/or processing of municipal solid waste on Site;</p> <p>d. Within 15 days after the effective date of this Agreed Order, obtain and submit an acceptable financial assurance mechanism for closure of the Site; and</p> <p>e. Within 60 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. through d.</p>

<p>4) Failed to comply with the general prohibition on outdoor burning. Specifically, Sandpit failed to prevent approximately 300 cubic yards of waste including wood, wood mulch and soil from igniting and burning at the Site [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>		
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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

DATES	Assigned	22-Jan-2007	Screening	22-Jan-2007	EPA Due	
	PCW	17-May-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	I. 35 Sandpit, Inc.		
Reg. Ent. Ref. No.	RN102869484		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	32665	No. of Violations	4	
Docket No.	2007-0237-MLM-E	Order Type	1660	
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Marlin Bullard	
Multi-Media	Air Quality	EC's Team	EnforcementTeam 8	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Subtotals 2, 3, & 7

Notes: Enhancement for one NOV with the same or similar violations and one NOV with dissimilar violations at this site within the past five years.

Culpability Subtotal 4

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

Total EB Amounts Subtotal 6
Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 22-Jan-2007

Docket No. 2007-0237-MLM-E

PCW

Respondent I. 35 Sandpit, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32665

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102869484

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component Number of... Enter Number Here Adjust.

NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	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 (number of judgments or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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) 7%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with the same or similar violations and one NOV with dissimilar violations at this site within the past five years.

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

Screening Date 22-Jan-2007

Docket No. 2007-0237-MLM-E

PCW

Respondent I. 35 Sandpit, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32665

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102869484

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 106.149(5) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to ensure that all in-plant roads are paved and cleaned or sprinkled with water and/or chemicals as necessary to achieve maximum control of dust emissions, as documented during investigations conducted on October 12, 2006 and February 22, 2007. Specifically, during the investigations, it was documented that dust emissions from the Site's roads were leaving the Site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	10%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 102 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$2,000

Two single events are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,484

Violation Final Penalty Total \$2,140

This violation Final Assessed Penalty (adjusted for limits) \$2,140

Economic Benefit Worksheet

Respondent I. 35 Sandpit, Inc.
Case ID No. 32665
Reg. Ent. Reference No. RN102869484
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$20,000	12-Oct-2006	3-Nov-2007	1.1	\$71	\$1,414	\$1,484
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to pave or set up dust controls to prevent dust emissions from leaving the site. The Date Required is the date of the investigation and the Final Date is the estimated date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs
 (This section is currently blank)

Approx. Cost of Compliance \$20,000 **TOTAL** \$1,484

Screening Date 22-Jan-2007

Docket No. 2007-0237-MLM-E

PCW

Respondent I. 35 Sandpit, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32665

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102869484

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 330.7(a)

Violation Description

Failed to obtain authorization for the storage and/or processing of municipal solid waste, as documented during an investigation conducted on October 12, 2006. Specifically, during the investigation, it was documented that Sandpit disposed of approximately 7,500 cubic yards of municipal solid waste from off site sources that was not included on its Notice of Intent including wood, wood mulch and soil at the Site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

102 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,000

Two quarterly events are recommended from the October 12, 2006 investigation date to the January 22, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$49

Violation Final Penalty Total \$2,140

This violation Final Assessed Penalty (adjusted for limits) \$2,140

Economic Benefit Worksheet

Respondent I. 35 Sandpit, Inc.
Case ID No. 32665
Reg. Ent. Reference No. RN102869484
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
6.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,000	12-Oct-2006	4-Oct-2007	1.0	\$49	n/a	\$49

Notes for DELAYED costs

Estimated cost to implement procedures to prevent the unauthorized disposal of waste. The Date Required is the date of the investigation and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$49

Screening Date 22-Jan-2007

Docket No. 2007-0237-MLM-E

PCW

Respondent I. 35 Sandpit, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32665

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102869484

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 328.5(d)

Violation Description

Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors, as documented during a investigation conducted on October 12, 2006. Specifically, Sandpit failed to provide financial assurance for its recycling operations under its Notice of Intent.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

1036 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	X
	single event	

Violation Base Penalty \$3,000

Three annual events are recommended from the March 22, 2004 date the facility was purchased by the Respondent to the January 22, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4,163

Violation Final Penalty Total \$3,210

This violation Final Assessed Penalty (adjusted for limits) \$3,210

Economic Benefit Worksheet

Respondent I. 35 Sandpit, Inc.
Case ID No. 32665
Reg. Ent. Reference No. RN102869484
Media Municipal Solid Waste
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$3,965	12-Oct-2006	4-Oct-2007	1.0	\$198	\$3,965	\$4,163
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to establish and maintain financial assurance for the closure of the Site. The Date Required is the date of the investigation and the Final Date is the estimated date of compliance.

Approx. Cost of Compliance

\$3,965

TOTAL

\$4,163

Screening Date 22-Jan-2007

Docket No. 2007-0237-MLM-E

PCW

Respondent I. 35 Sandpit, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32665

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102869484

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Violation Number 4

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

Violation Description

Failed to comply with the general prohibition on outdoor burning, as documented during an investigation conducted on October 12, 2006. Specifically, Sandpit failed to prevent approximately 300 cubic yards of waste including wood, wood mulch and soil from igniting and burning at the Site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

102 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,900

Violation Final Penalty Total \$1,070

This violation Final Assessed Penalty (adjusted for limits) \$1,070

Economic Benefit Worksheet

Respondent I. 35 Sandpit, Inc.
Case ID No. 32665
Reg. Ent. Reference No. RN102869484
Media Municipal Solid Waste
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$3,900	12-Oct-2006	12-Oct-2006	0.0	\$0	\$3,900	\$3,900
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to dispose of approximately 300 cubic yards of waste at a permitted municipal solid waste landfill at \$13 per cubic yard. The Date Required is the date of the investigation and the Final Date is the estimated date of compliance.

Approx. Cost of Compliance	\$3,900	TOTAL	\$3,900
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Compliance History

Customer/Respondent/Owner-Operator:	CN600343941 I. 35 Sandpit, Inc.	Classification: AVERAGE	Rating: 5.34
Regulated Entity:	RN102869484 I-35 SAND PIT	Classification: AVERAGE	Site Rating: 10.00
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER		455040174
	STORAGE TANK REGISTRATION REGISTRATION		75131
Location:	4372 S INTERSTATE 35 W, ALVARADO, TX, 76009		Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	March 23, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 23, 2002 to March 23, 2007		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Marlin Bullard Phone: (254) 761-3038

Site Compliance History Components

- | | |
|--|---|
| 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 of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | <u>I. 35 Sandpit, Inc.</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>Reeder Distributors, Inc.</u>
<u>Ezell Chuck & Marsha</u>
<u>Danny and Suzie Shipman</u> |
| 5. When did the change(s) in ownership occur? | <u>11/26/2002</u>
<u>12/10/2002</u>
<u>03/22/2004</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
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.)
 - Date: 11/05/2003 (250146)
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 328, SubChapter A 328.5(b)[G]
 - Description: Failure to submit a Notice of Intent to Operate a Recycling Facility.
 - Self Report? NO Classification: Minor
 - Citation: 30 TAC Chapter 328, SubChapter A 328.5(c)(1)
 - Description: Failure to maintain records that document compliance with 30 TAC 328.4(b)(1).
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 328, SubChapter A 328.5(c)(2)[G]
 - Description: Failure to maintain records of reasonable efforts to maintain source separation.
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 328, SubChapter A 328.5(e)
 - Description: Failure to provide a Fire Suppression and Prevention Plan.
 - Date: 10/10/2006 (513175)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 106, SubChapter E 106.149(5)
5C THC Chapter 382, SubChapter A 382.085(b)
Description: Failure to comply with Permit by Rule (PBR) 30 Texas Administrative Code (TAC) 106.149(5), which requires that all in-plant roads be paved and cleaned or sprinkled with water and/or chemicals as necessary to achieve maximum control of dust emissions.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 106, SubChapter E 106.149(7)
5C THC Chapter 382, SubChapter A 382.085(b)
Description: During the August 11, 2006 investigation, it was noted that I-35 Sand Pit could not demonstrate that the sand processing operation was in compliance with the maximum production rate limit of 50 tph.

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
I. 35 SANDPIT, INC.
RN102869484**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0237-MLM-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding I. 35 Sandpit, Inc. ("Sandpit") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Sandpit appear before the Commission and together stipulate that:

1. Sandpit owns and operates a sand mining and wood recycling operation at 4372 South Interstate 35 West in Alvarado, Johnson County, Texas (the "Site").
2. The Site involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361, and consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and Sandpit agree that the Commission has jurisdiction to enter this Agreed Order, and that Sandpit is subject to the Commission's jurisdiction.
4. Sandpit received notice of the violations alleged in Section II ("Allegations") on or about January 9, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Sandpit of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eight Thousand Five Hundred Sixty Dollars (\$8,560) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). Sandpit has paid Six Thousand Eight Hundred Forty-Eight Dollars (\$6,848) of the administrative penalty and One Thousand Seven Hundred Twelve Dollars (\$1,712) is deferred contingent upon Sandpit'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 Sandpit fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Sandpit to pay all or part of the deferred penalty.

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 of the TCEQ and Sandpit have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. 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 Sandpit has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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 Site, Sandpit is alleged to have:

1. Failed to ensure that all in-plant roads are paved and cleaned or sprinkled with water and/or chemicals as necessary to achieve maximum control of dust emissions, in violation of 30 TEX. ADMIN. CODE § 106.149(5) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during investigations conducted on October 12, 2006 and February 22, 2007. Specifically, during the investigations, it was documented that dust emissions from the Site's roads were leaving the Site.
2. Failed to obtain authorization for the storage and/or processing of municipal solid waste, in violation of 30 TEX. ADMIN. CODE § 330.7(a), as documented during an investigation conducted on October 12, 2006. Specifically, during the investigation, it was documented that Sandpit disposed of approximately 7,500 cubic yards of municipal solid waste from off site sources that was not included on its Notice of Intent including wood, wood mulch and soil at the Site.
3. Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors, in violation of 30 TEX. ADMIN. CODE § 328.5(d), as documented during a investigation conducted on October 12, 2006. Specifically, Sandpit failed to provide financial assurance for its recycling operations under its Notice of Intent.

4. Failed to comply with the general prohibition on outdoor burning, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 12, 2006. Specifically, Sandpit failed to prevent approximately 300 cubic yards of waste including wood, wood mulch and soil from igniting and burning at the Site.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Sandpit pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Sandpit'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: I. 35 Sandpit, Inc., Docket No. 2007-0237-MLM-E" to:

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

2. It is further ordered that Sandpit shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease any unauthorized burning activities and implement measures to prevent the discharge of air contaminants from the Site;
 - b. Immediately upon the effective date of this Agreed Order, cease emissions of dust from the Site;
 - c. Within 15 days after the effective date of this Agreed Order, implement procedures to prevent the unauthorized storage and/or processing of municipal solid waste on Site;
 - d. Within 15 days after the effective date of this Agreed Order, obtain and submit an acceptable financial assurance mechanism for closure of the Site to:

Rob Norris, Senior Financial Analyst
Financial Assurance Division, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- e. Within 60 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. 2.a. through 2.d. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2301 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon Sandpit. Sandpit 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.
4. If Sandpit 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, Sandpit's failure to comply is not a violation of this Agreed Order. Sandpit shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Sandpit shall notify the Executive Director within seven days after Sandpit becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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 Sandpit shall be made in writing to the Executive Director. Extensions are not effective until Sandpit receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Sandpit 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.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Sandpit, or three days after the date on which the Commission mails notice of the Order to Sandpit, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

9/7/07

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, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

Signature

6-18-07

Date

Finis Shipman

Name (Printed or typed)
Authorized Representative of
I. 35 Sandpit, Inc.

President

Title

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

