

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2003-0302-MSW-E TCEQ ID: 455150025 AND RN102864790 CASE NO.: 16184
RESPONDENT NAME: MARCOS MARISCAL**

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 type="checkbox"/> AIR	<input 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: South side of State Highway 107, Block 193, approximately 0.5 miles east of the intersection of State Highway 107 and Farm-to-Market Road 493, La Blanca, Hidalgo County</p> <p>TYPE OF OPERATION: Unauthorized municipal solid waste disposal site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There has been one complaint. There is no record of additional pending enforcement actions regarding this facility.</p> <p>INTERESTED PARTIES: One complaint has been received but the complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 10, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Dana Shuler, Waste Enforcement Division, MC 128, (512) 239-2505 TCEQ Regional Contact: Mr. David Ramirez, Harlingen Regional Office, MC R-15, (956) 430-6048 Respondent: Mr. Marcos Mariscal, P.O. Box 1058, Elsa, Texas 78543-1058 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:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: January 11, 2000</p> <p>Dates of Investigation Relating to this Case: November 20, 2002</p> <p>Date of NOE Relating to this Case: January 29, 2003</p> <p>Background Facts:</p> <p>The EDPRP was filed on February 8, 2005. It was mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating the Respondent received notice of the EDPRP. The Respondent requested a Financial Inability to Pay ("FIP") review, and on March 30, 2007, was informed that, based on the information provided, the TCEQ Financial Administration Division had determined that the Respondent was able to pay the full amount of the assessed penalty. The Executive Director mailed a proposed Agreed Order to the Respondent on May 8, 2007. However, subsequent to the denial of the FIP request, the Respondent ceased all communication with TCEQ. The Respondent failed to return a signed agreed order, failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>MSW:</p> <p>1. Failed to obtain a scrap tire storage site registration for the Facility [30 TEX. ADMIN CODE § 328.60(a)].</p> <p>2. Failed to prevent the collection, storage, and disposal of municipal solid waste at an unauthorized disposal site [30 TEX. ADMIN. CODE §§ 330.4(a) (now found at 30 TEX. ADMIN. CODE § 330.7(a)), and 330.15(a) (now found at 30 TEX. ADMIN. CODE § 330.5(a))].</p>	<p>Total Assessed: \$10,500</p> <p>Total Due to General Revenue: \$10,500</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</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 Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease accepting any additional waste for disposal. 2. Within 60 days: <ol style="list-style-type: none"> a. Ensure that all solid waste disposed of or stored at the Facility is removed and sent for disposal at a permitted municipal solid waste landfill; and b. Remove all used/scrap tires from the Facility and dispose of them at a permitted municipal solid waste landfill that is authorized to receive the used/scrap tires. 3. Within 75 days submit written certification demonstrating compliance.

Penalty Calculation Worksheet (PCW)

TCEQ Policy Revision 2 (09/02) PCW Revision 3/13/2003

DATES
 PCW 26-Apr-2007 Screening 24-Feb-2003 Priority Due 24-Jun-2003 EPA Due

RESPONDENT INFORMATION
 Respondent: Marcos Mariscal
 Respondent/Site ID No(s): Municipal Solid Waste Unauthorized Site No. 455150025; Regulated Entity ID No. RN102864790
 Facility/Site Region: 15 - Harlingen Major/Minor Source: Minor

CASE INFORMATION
 Enf./Case ID No(s): Enf. Case No. 16184
 Docket No.: 2003-0302-MSW-E No. Violations: 1
 Case Priority: 3 Order Type: 1660 without deferral
 Enf. Coordinator: Dana Shuler EC's Team: Enforcement Team 8
 Media Program(s): Municipal Solid Waste
 Admin. Penalty \$ Limit: Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$5,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5% Enhancement Subtotals 2, 3 & 7 \$250

Notes: The respondent is classified as an Average Performer. Additionally, there is one previous Notice of Violation (NOV), dated April 17, 2000, for the same or similar violations for this respondent. +

Culpability 0% Enhancement Subtotal 4 \$0

Notes: No. The respondent does not meet the culpability criteria. +

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

Notes: Before NOV NOV to EDPRP/Settlement Offer
 Extraordinary Ordinary None of the above X (mark with small x)
 The respondent is not yet in compliance. +

Economic Benefit 0% Enhancement* Subtotal 6 \$0

\$39 Total EB Amounts *Capped at the Total EB \$ Amount
 \$400 Approx. Cost of Compliance =

SUM OF SUBTOTALS 1-7 Final Subtotal \$5,250

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment \$0

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

Final Penalty Amount \$5,250

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$5,250

DEFERRAL Deferral Reduction Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (enter number only; e.g. 20 for 20% reduction)
 Notes: No deferral is recommended because the respondent has received a previous NOV, dated April 17, 2000, for the same or similar violations and this is not an expedited case. =

PAYABLE PENALTY \$5,250

Screening Date 24-Feb-2003 **Docket Number** 2003-0302-MSW-E **PCW**
Respondent Marcos Mariscal **Policy Revision 2 (09/02)**
Case ID No. Enf. Case No. 16184 **PCW Revision 3/13/2003**
Respondent/Site ID No. Municipal Solid Waste Unauthorized Site No. 455150025; Regulated Entity ID No. RN102864790
Media [Statute] Municipal Solid Waste
Enf. Coordinator Dana Shuler
Site Address On the south side of State Highway 107, Block 193, approximately 0.50 mile east of the intersection of State Highway 107 and Farm-to-Market Road 493, La Blanca, Hidalgo County

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 (<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>)	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 (<i>number of judgements 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%

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) 5%

>> **Repeat Violator (Subtotal 3)**

No Select Yes/No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer Select High, Average or Poor

Adjustment Percentage (Subtotal 7) 0%

Compliance History Summary

Compliance History Notes

The respondent is classified as an Average Performer. Additionally, there is one previous Notice of Violation (NOV), dated April 17, 2000, for the same or similar violations for this respondent.

Total Adjustment Percentage (Subtotals 2, 3 & 7) 5%

Screening Date 24-Feb-03 **Docket Number** 2003-0302-MSW-E **PCW**
Respondent Marcos Mariscal **Policy Revision 2 (09/02)**
Case ID No. Enf. Case No. 16184 **PCW Revision 3/13/2003**
Respondent/Site ID No. Municipal Solid Waste Unauthorized Site No. 455150025; Regulated Entity ID No. RN102864790
Media [Statute] Municipal Solid Waste
Enf. Coordinator Dana Shuler
Violation Number
Primary Rule Cite
Secondary Cite(s)
Violation Description

Base Penalty

» Environmental, Property and Human Health Matrix

		Harm			
		Major	Moderate	Minor	
OR	Release				
	Actual		x		
	Potential				Percent <input type="text" value="25%"/>

» Programmatic Matrix

		Major	Moderate	Minor	
OR	Falsification				Percent <input type="text"/>

Matrix Notes

Adjustment
Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one; use small x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	x
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Events Notes

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$)

Violation Final Penalty total

This Violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Marcos Mariscal
ID Number(s) Enf. Case No. 16184
Media [Statute] Municipal Solid Waste
Violation Number 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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				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	\$400	20-Nov-2002	31-Oct-2004	1.9	\$39	n/a	\$39
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

This is an estimate of the cost to dispose of approximately 27 cubic yards of waste at a permitted municipal solid waste landfill.

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/equip				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

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Approx Cost of Compliance

TOTAL

Penalty Calculation Worksheet (PCW)

TCEQ		Policy Revision 2 (09/02)		PCW Revision 3/13/2003	
DATES					
PCW	26-Apr-2007	Screening	24-Feb-2003	Priority Due	24-Jun-2003
EPA Due					
RESPONDENT INFORMATION					
Respondent	Marcos Mariscal				
Respondent/Site ID No(s)	Municipal Solid Waste Unauthorized Site No. 455150025; Regulated Entity ID No. RN102864790				
Facility/Site Region	15 - Harlingen	Major/Minor Source		Major	
CASE INFORMATION					
Enf./Case ID No(s)	Enf. Case No. 16184		No. Violations 1		
Docket No.	2003-0302-MSW-E		Order Type 1660 without deferral		
Case Priority	3	EC's Team		Enforcement Team 8	
Enf. Coordinator	Dana Shuler				
Media Program(s)	Waste Tires				
Admin. Penalty \$ Limit	Minimum \$0	Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)		Subtotal 1	\$5,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
Compliance History	5% Enhancement	Subtotals 2, 3 & 7	\$250
Notes	The respondent is classified as an Average Performer. Additionally, there is one previous Notice of Violation (NOV), dated April 17, 2000, for the same or similar violations for this respondent.		+
Culpability	0% Enhancement	Subtotal 4	\$0
Notes	The respondent does not meet the culpability criteria.		+
Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
Extraordinary	Before NOV	NOV to EDPRP/Settlement Offer	
Ordinary			
None of the above	X	(mark with small x)	+
Notes	The respondent is not yet in compliance.		
Economic Benefit	0% Enhancement*	Subtotal 6	\$0
\$292	Total EB Amounts	*Capped at the Total EB \$ Amount	
\$3,000	Approx. Cost of Compliance	=	
SUM OF SUBTOTALS 1-7		Final Subtotal	\$5,250
OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
Reduces or enhances the Final Subtotal by the indicated percentage. (enter number only; e.g. -30 for -30%)			
Notes			=
		Final Penalty Amount	\$5,250
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$5,250
DEFERRAL			
Reduces the Final Assessed Penalty by the indicated percentage. (enter number only; e.g. 20 for 20% reduction)		Adjustment	\$0
Notes	No deferral is recommended because the respondent has received a previous NOV, dated April 17, 2000, for the same or similar violations and this is not an expedited case.		=
PAYABLE PENALTY			\$5,250

Screening Date 24-Feb-2003

Docket Number 2003-0302-MSW-E

PCW

Respondent Marcos Mariscal

Policy Revision 2 (09/02)

Case ID No. Enf. Case No. 16184

PCW Revision 3/13/2003

Respondent/Site ID No. Municipal Solid Waste Unauthorized Site No. 455150025; Regulated Entity ID No. RN102864790

Media [Statute] Waste Tires

Enf. Coordinator Dana Shuler

Site Address On the south side of State Highway 107, Block 193, approximately 0.50 mile east of the intersection of State Highway 107 and Farm-to-Market Road 493, La Blanca, Hidalgo County

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	0	0%
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 judgements 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) 5%

>> Repeat Violator (Subtotal 3)

No Select Yes/No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer Select High, Average or Poor

Adjustment Percentage (Subtotal 7) 0%

Compliance History Summary

Compliance History Notes The respondent is classified as an Average Performer. Additionally, there is one previous Notice of Violation (NOV), dated April 17, 2000, for the same or similar violations for this respondent.

Total Adjustment Percentage (Subtotals 2, 3 & 7) 5%

Screening Date 24-Feb-03 **Docket Number** 2003-0302-MSW-E **PCW**
Respondent Marcos Mariscal **Policy Revision 2 (09/02)**
Case ID No. Enf. Case No. 16184 **PCW Revision 3/13/2003**
Respondent/Site ID No. Municipal Solid Waste Unauthorized Site No. 455150025; Regulated Entity ID No. RN102864790
Media [Statute] Waste Tires
Enf. Coordinator Dana Shuler
Violation Number
Primary Rule Cite
Secondary Cite(s)
Violation Description

Base Penalty

» Environmental, Property and Human Health Matrix

		Harm			Percent
		Major	Moderate	Minor	
OR	Release Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

» Programmatic Matrix

		Falsification	Major	Moderate	Minor	Percent
OR		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

Adjustment **Base Penalty Subtotal**

Violation Events

Number of Violation Events

mark only one; use small x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="text" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Events Notes

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$)

Violation Final Penalty total

This Violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Marcos Mariscal
ID Number(s) Enf. Case No. 16184
Media [Statute] Waste Tires
Violation Number 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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				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	\$3,000	20-Nov-2002	31-Oct-2004	1.9	\$292	n/a	\$292
Other (As Needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

This is an estimated cost to remove all used or scrap tires from the facility.

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/equip				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 \$3,000

TOTAL \$292

COMPLIANCE HISTORY

Customer/Respondent/Owner-Operator:	CN601451651 MARISCAL, MARCOS	Classification:	Rating: 2.67
		Average	
<hr/>			
Regulated Entity/ID Nos.:	RN102864790 MARCOS MARISCAL SITE	Classification:	Rating: 2.67
		Average	
<hr/>			
ID Number(s):	MUNICIPAL SOLID WASTE NON-PERMITTED	ID NUMBER	455150025
<hr/>			
Location [physical address or description of location (street, highway, FM, etc.) including city or nearest city, and county]:	On the south side of State Highway 107, Block 193, approximately 0.50 mile east of the intersection of State Highway 107 and Farm-to-Market Road 493, La Blanca, Hidalgo County	Repeat Violator: (y/n)	n
<hr/>			
TCEQ Region No.	15		
<hr/>			
Date Compliance History Prepared:	December 21, 2004		

Agency Decision Requiring Compliance History (mark one):

- | | |
|-------------------------------------|-----------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit |
| <input checked="" type="checkbox"/> | enforcement |
| <input type="checkbox"/> | the use of announced investigations (Field Ops) |
| <input type="checkbox"/> | participation in innovative programs |

Compliance Period: December 21, 1999 - December 21, 2004

TCEQ staff person to contact for additional information regarding this compliance history:

Name: Jaime Garza Phone: (956) 430-6030

Site Compliance History Components

- | | | | |
|----------------------------------------------------------------------------------------------|-----------------------------------------|----------------------------------------|------------------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Unk |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Unk |
| 3. If Yes, who is the current owner? | <u>N/A</u> | | |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> | | |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> | | |

Components (multimedia) for the Site:

A. Final enforcement orders, court judgments, and consent decrees of the state of Texas and the federal government

1.	Effective Date: None	Type of Action:
	Violation Citation 1:	Classification:
	Violation Description:	

B. Any criminal convictions of the state of Texas and the federal government.

Conviction Date:	None
Count 1:	
Count 2:	

C. Chronic excessive emissions events: None

D. The dates of investigations.

1. 06/02/2000
2. 01/15/2002
3. 09/04/2002
4. 11/20/2002

E. Written notices of violation (NOV)

1. Date: April 17, 2000 Self-reported?
Violation Citation 1: 30 TEX. ADMIN. CODE § 330.5(a)(2) and (a)(3) Classification: [MODERATE]
Violation Description: Failure to properly dispose of municipal solid waste, in violation of the Texas Solid Waste Disposal Act, or any regulations, rules, permit, license, order of the commission or in such a manner so as to cause the creation and maintenance of a nuisance.
- Violation Citation 2: 30 TEX. ADMIN. CODE § 328.59(b) Classification: [MODERATE]
Violation Description: Failure to meet general requirements for a scrap tire storage facility.
- Violation Citation 3: 30 TEX. ADMIN. CODE § 328.60(a) Classification: [MAJOR]
Violation Description: Failure to obtain a registration for operation of a scrap tire storage facility.
- Violation Citation 4: 30 TEX. ADMIN. CODE § 330.4(a) Classification: [MAJOR]
Violation Description: Failure to obtain a registration for operation of a scrap tire storage facility.

F. Environmental audits.

1. Notice of Intent Date: N/A

Disclosure Date:

Violation Citation 1: Classification:

Violation Description:

G. Type of environmental management systems (EMSs).

None

H. Voluntary on-site compliance assessment dates.

None

I. Participation in a voluntary pollution reduction program.

Listed as Partner in "Clean Texas Tables"

J. Early compliance.

None

Sites Outside of Texas

State: None

Site Name:

Location:

Type of Action:

Effective Date:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MARCOS MARISCAL;
MSW UNAUTHORIZED SITE
NO. 455150025;
RN102864790

§
§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2003-0302-MSW-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Marcos Mariscal ("Mr. Mariscal").

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

FINDINGS OF FACT

1. Mr. Mariscal owns and operates an unauthorized municipal solid waste disposal site located on the south side of State Highway 107, Block 193, approximately 0.5 miles east of the intersection of State Highway 107 and Farm-to-Market Road 493 in La Blanca, Hidalgo County, Texas (the "Facility").
2. The Facility involves the management and/or disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on November 20, 2002, a TCEQ Harlingen Regional Office investigator documented that Mr. Mariscal:
 - a. Failed to obtain a scrap tire storage site registration for the Facility. Specifically, a TCEQ Harlingen Regional Office investigator documented approximately 3,000 used and scrap tires at the Facility; and

- b. Failed to prevent the collection, storage, and disposal of municipal solid waste at an unauthorized disposal site. Specifically, a TCEQ Harlingen Regional Office investigator documented four piles of approximately 27 cubic yards each of commingled waste containing domestic trash, plastic, PVC pipes, and construction/demolition waste covering approximately one acre of the Facility.
4. Mr. Mariscal received notice of the violations on or about February 3, 2003.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Marcos Mariscal MSW Unauthorized Site No. 455150025" (the "EDPRP") in the TCEQ Chief Clerk's office on February 8, 2005.
6. By letter dated February 8, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Mariscal with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Mariscal received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Mariscal received notice of the EDPRP, provided by the Executive Director. Mr. Mariscal failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Mariscal is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Mariscal failed to obtain a scrap tire storage site registration for the Facility, in violation of 30 TEX. ADMIN. CODE § 328.60(a).
3. As evidenced by Finding of Fact No. 3.b., Mr. Mariscal failed to prevent the collection, storage, and disposal of municipal solid waste at an unauthorized disposal site, in violation of 30 TEX. ADMIN. CODE §§ 330.4(a)¹ and 330.15(a)².

¹ 30 TEX. ADMIN. CODE § 330.4(a) is now 30 TEX. ADMIN. CODE § 330.7(a), effective, March 27, 2006, 31 Tex. Reg. 2502.

² 30 TEX. ADMIN. CODE § 330.15(a) is now 30 TEX. ADMIN. CODE § 330.5(a), effective, March 27, 2006, 31 Tex. Reg. 2502.

4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Mariscal with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 7, Mr. Mariscal failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Mariscal and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Mariscal for violations of the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of ten thousand five hundred dollars (\$10,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Mariscal is assessed an administrative penalty in the amount of ten thousand five hundred dollars (\$10,500.00) for violations of the Texas Health & Safety Code and the rules of the TCEQ. The payment of this administrative penalty and Mr. Mariscal's compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Marcos Mariscal MSW Unauthorized Site No. 455150025; Docket No. 2003-0302-MSW-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. Mr. Mariscal shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Commission Order, Mr. Mariscal shall cease accepting any additional waste for disposal at the Facility;
 - b. Within 60 days after the effective date of this Commission Order, Mr. Mariscal shall:
 - i. Ensure that all solid waste disposed of or stored at the Facility is removed and sent for disposal at a permitted municipal solid waste landfill; and
 - ii. Remove all used/scrap tires from the Facility and dispose of them at a permitted municipal solid waste landfill that is authorized to receive the used/scrap tires; and
 - c. Within 75 days after the effective date of this Commission Order, Mr. Mariscal shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with ordering provision Nos. 2.a. through 2.b.ii. 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 fine and imprisonment for knowing violations.”

Mr. Mariscal shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.ii. 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:

Ms. Lorinda Gardner, Waste Section Manager
Texas Commission on Environmental Quality
Harlingen Regional Office
1804 West Jefferson Ave.
Harlingen, TX 78550-5247

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Mariscal. Mr. Mariscal is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Mariscal fails 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, Mr. Mariscal's failure to comply is not a violation of this Order. Mr. Mariscal shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Mariscal shall notify the Executive Director within seven days after Mr. Mariscal 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 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 Mr. Mariscal shall be made in writing to the Executive Director. Extensions are not effective until Mr. Mariscal receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Mariscal if the Executive Director determines that Mr. Mariscal has not complied with one or more of the terms or conditions in this Order.

8. 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.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Marcos Mariscal;
MSW Unauthorized Site No. 455150025
Docket No. 2003-0302-MSW-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF LENA ROBERTS

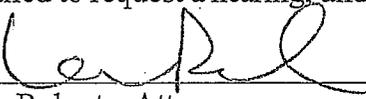
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Lena Roberts. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Marcos Mariscal MSW Unauthorized Site No. 455150025” (the “EDPRP”) was filed with the Office of the Chief Clerk on February 8, 2005.

The EDPRP was mailed to Mr. Mariscal at his last known address on February 8, 2005, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Mariscal received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

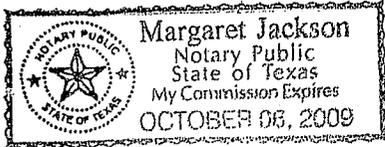
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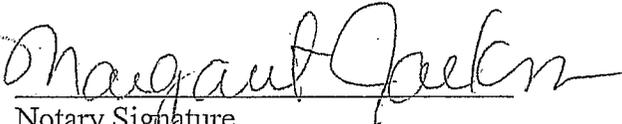


Lena Roberts, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Lena Roberts, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 6th day of July, A.D., 2007.





Notary Signature