

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-1274-MSW-E **TCEQ ID:** RN102854478 **CASE NO.:** 26143
RESPONDENT NAME: John Tamez dba Plastics International North

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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 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: Plastics International North, 7771 Kiely Road, Canutillo, El Paso County</p> <p>TYPE OF OPERATION: Plastics grinding and recycling</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: 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 June 25, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Audra Ruble, Enforcement Division, Enforcement Team 4, MC 149, (361) 825-3126; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896 Respondent: Mr. John R. Tamez, President, Plastics International North, PO Box 857, Canutillo, Texas 79835 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 type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 18, 2005</p> <p>Date of NOE Relating to this Case: May 11, 2005 (NOE)</p> <p>Background Facts: This was a routine investigation. Four violations were documented.</p> <p>WASTE</p> <p>1) Failed to notify the agency as soon as possible but no later than 24 hours after determination that a reportable discharge or spill has occurred [30 TEX. ADMIN. CODE § 327.3(b) and TEX. WATER CODE § 26.039(b)].</p> <p>2) Failed to store solid waste in a manner so as to prevent the creation and maintenance of a nuisance and the endangerment of human health and welfare or the environment [30 TEX. ADMIN. CODE § 330.15(a)(3)].</p> <p>3) Failed to store all solid waste in a manner so as to prevent a fire, safety, or health hazard [30 TEX. ADMIN. CODE § 330.209(a)].</p> <p>4) Failed to immediately abate and contain a spill or discharge and cooperate fully with the Executive Director and the local incident command system [30 TEX. ADMIN. CODE § 327.5(a) and TEX. WATER CODE § 26.266(a)].</p>	<p>Total Assessed: \$21,000</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$875 (the remaining \$20,125 to be paid in 23 monthly payments of \$875 each)</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>Findings Orders Justification: Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors.</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within five days after the effective date of this Agreed Order, submit notification to the Agency by providing the information listed in 30 TEX. ADMIN. CODE § 327.3(d);</p> <p>b. Within 15 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation and/or other records to demonstrate compliance with Ordering Provision a.;</p> <p>c. Within 60 days after the effective date of this Agreed Order, ensure that all waste generated from the fire and other waste located at the Facility has been removed and properly disposed at a facility authorized to accept the type of waste being disposed;</p> <p>d. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, documentation of the dates the waste was removed from the Facility and copies of receipts from the permitted facility that received the waste and/or other records to demonstrate compliance with Ordering Provision c.;</p> <p>e. Within 90 days after the effective date of this Agreed Order, submit an Affected Property Assessment Report (APAR) to the Executive Director for approval. The APAR should include an assessment of all property affected by the waste generated from the fire at the Facility, including but not limited to the on-site water well and on-site and off-site property potentially affected. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350; and</p> <p>f. Within 105 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation to demonstrate compliance with Ordering Provision e.</p>



Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision May 19, 2005

DATES	Assigned	16-May-2005			
	PCW	28-Jun-2006	Screening	23-Jun-2005	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	John Tamez dba Plastics International North				
Reg. Ent. Ref. No.	RN102854478				
Facility/Site Region	6-El Paso	<	Major/Minor Source	Minor Source	<

CASE INFORMATION					
Enf./Case ID No.	26143	No. of Violations	2		
Docket No.	2005-1274-MSW-E	Order Type	Findings		
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Audra L. Ruble		
Multi-Media		EC's Team	Enforcement Team 8		
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$21,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0% Enhancement Subtotals 2, 3, & 7 \$0

Notes No change due to Average Performer classification.

Culpability No < 0% Enhancement Subtotal 4 \$0

Notes The respondent does not meet the culpability criteria.

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

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	<i>(mark with a small x)</i>

Notes The respondent is not yet in compliance.

Economic Benefit 0% Enhancement* Subtotal 6 \$0

Total EB Amounts	\$9,664	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$150,100	

SUM OF SUBTOTALS 1-7 Final Subtotal \$21,000

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 \$21,000

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$21,000

DEFERRAL 0% 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 this is a Findings order.

PAYABLE PENALTY \$21,000

Screening Date: 23-Jun-2005

Docket No. 2005-1274-MSW-E

PCW

Respondent: John Tamez dba Plastics International North

Policy Revision 2 (September 2002)

Case ID No. 26143

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102854478

Media [Statute] Municipal Solid Waste

Enf. Coordinator: Audra L. Ruble

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>)	0	0%
	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</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%
<i>Please Enter Yes or No</i>			
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) 0%

>> 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

No change due to Average Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date	23-Jun-2005	Docket No.	2005-1274-MSW-E	PCW
Respondent	John Tamez dba Plastics International North		<i>Policy Revision 2 (September 2002)</i>	
Case ID No.	26143	<i>PCW Revision May 19, 2005</i>		
Reg. Ent. Reference No.	RN102854478			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Audra L. Ruble			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code § 327.3(b)			
Secondary Rule Cite(s)				
Violation Description	Failure to notify the agency as soon as possible but no later than 24 hours after determination that a reportable discharge or spill has occurred.			
Base Penalty				\$10,000

>> **Environmental, Property and Human Health Matrix**

OR	Harm				Percent
	Release	Major	Moderate	Minor	
	Actual				
	Potential				

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
		X			10%

Matrix Notes: The respondent failed to comply with 100% of the rule requirement.

Adjustment - \$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events: 1

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One event is recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount: \$7	Violation Final Penalty Total: \$1,000
This violation Final Assessed Penalty (adjusted for limits): \$1,000	

Economic Benefit Worksheet

Respondent: John Tamez dba Plastics International North
 Case ID No.: 26143
 Reg. Ent. Reference No.: RN102854478
 Media [Statute]: 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
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$100	18-Mar-2005	15-Mar-2006	1.0	\$0	\$7	\$7
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: This is an estimated cost to provide notification to the agency that a reportable discharge or spill has occurred.

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

TOTAL

Screening Date 23-Jun-2005 **Docket No.** 2005-1274-MSW-E **PCW**
Respondent John Tamez dba Plastics International North *Policy Revision 2 (September 2002)*
Case ID No. 26143 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102854478
Media [Statute] Municipal Solid Waste
Enf. Coordinator Audra L. Ruble

Violation Number 2
Primary Rule Cite(s) 30 Tex. Admin. Code §§ 330.5(a), 330.22, and 327.5(a)
Secondary Rule Cite(s) Tex. Water Code § 26.266(a)

Violation Description
 Failure to store solid waste in a manner so as to prevent the creation and maintenance of a nuisance and the endangerment of human health and welfare or the environment. Failure to store all solid waste in a manner so as to prevent a fire, safety, or health hazard. Failure to immediately abate and contain a spill or discharge. Specifically, the respondent stored various types of plastics, including but not limited to, polypropyl, polyethyl, polystyrene, and PVC in a manner that caused and promoted a fire, as determined by the State Fire Marshal's Office. Additionally, the respondent failed to respond to the TCEQ's verbal demand and subsequent demand letter requesting that the respondent make arrangements for obtaining appropriate equipment and personnel to evaluate environmental impact from the discharge and to make arrangements for post-fire cleanup.

Base Penalty \$10,000

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	X			Percent 50%
	Potential				

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					Percent

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors, as documented by samples taken by the agency's Strike Team. Additionally, the violation prompted the evacuation of nearby structures, including an apartment complex and an elementary school.

Adjustment -\$5,000

Base Penalty Subtotal \$5,000

Violation Events

Number of Violation Events 4

mark only one use a small x	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$20,000

Four monthly events are recommended based on the March 17, 2005 date the discharge commenced to the June 23, 2005 enforcement screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$9,658

Violation Final Penalty Total \$20,000

This violation Final Assessed Penalty (adjusted for limits) \$20,000

Economic Benefit Worksheet

Respondent John Tamez dba Plásticos International North
 Case ID No. 26143
 Reg. Ent. Reference No. RN102854478
 Media [Statute] Municipal Solid Waste
 Violation No. 2

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				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	\$150,000	17-Mar-2005	30-Jun-2006	1.3	\$9,658	n/a	\$9,658
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0
Notes for DELAYED costs	This is an estimated cost to conduct a site assessment, dispose of the waste resulting from the fire, and remediate the area that was affected by the incident.						

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 \$150,000

TOTAL \$9,658

Compliance History

Customer/Respondent/Owner-Operator:	CN602830432 TAMEZ, JOHN	Classification: AVERAGE Site Rating: 3.01
Regulated Entity:	RN102854478 PLASTICS INTERNATIONAL NORTH	Classification: AVERAGE Site Rating: 3.01 BY DEFAULT
ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	ID NUMBER F1512
Location:	7771 KIELY RD, CANUTILLO, TX 79835	
TCEQ Region:	REGION 06 - EL PASO	
Date Compliance History Prepared:	July 25, 2005	
Agency Decision Requiring Compliance History:	Enforcement	
Compliance Period:	July 25, 2000 to July 25, 2005	
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History		
Name:	Audra Ruble	Phone: (361) 825-3126

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?	Tamez, John
4. If Yes, who was/were the prior owner(s)?	Plastics International, Inc.
5. When did the change(s) in ownership occur?	03/22/2002

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.)
1 05/11/2005 (377021)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- 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
JOHN TAMEZ DBA PLASTICS
INTERNATIONAL NORTH
RN102854478**

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**BEFORE THE

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2005-1274-MSW-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding John Tamez dba Plastics International North ("Mr. Tamez") 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 Mr. Tamez presented this agreement to the Commission.

Mr. Tamez understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Mr. Tamez agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Mr. Tamez.

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

I. FINDINGS OF FACT

1. Mr. Tamez owns and operates a plastics grinding and recycling facility located at 7771 Kiely Road, Canutillo, El Paso County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation on March 18, 2005, TCEQ staff documented that Mr. Tamez:

- a. Failed to notify the agency as soon as possible but no later than 24 hours after the discharge that occurred from the Facility on March 17, 2005.
 - b. Failed to store solid waste, including but not limited to, polypropyl, polyethyl, polystyrene, and PVC, in a manner so as to prevent the creation and maintenance of a nuisance and the endangerment of human health and welfare or the environment. Specifically, the solid waste stored by the respondent resulted in a fire and discharge that prompted the evacuation of nearby structures, including an apartment complex and an elementary school.
 - c. Failed to prevent the storage of solid waste, including but not limited to, polypropyl, polyethyl, polystyrene, and PVC, in a manner that caused and promoted a fire, as determined by the State Fire Marshal's Office.
 - d. Failed to respond to the TCEQ's verbal demand and demand letter requesting that Mr. Tamez make arrangements for obtaining appropriate equipment and personnel to evaluate environmental impact from the discharge and to make arrangements for post-fire cleanup.
4. Mr. Tamez received notice of the violations on May 16, 2005.

II. CONCLUSIONS OF LAW

1. Mr. Tamez is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.002, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Tamez failed to notify the agency as soon as possible but no later than 24 hours after determination that a reportable discharge or spill has occurred, in violation of 30 TEX. ADMIN. CODE § 327.3(b).
3. As evidenced by Finding of Fact No. 3.b., Mr. Tamez failed to store solid waste in a manner so as to prevent the creation and maintenance of a nuisance and the endangerment of human health and welfare or the environment, in violation of 30 TEX. ADMIN. CODE § 330.5(a).
4. As evidenced by Finding of Fact No. 3.c., Mr. Tamez failed to store all solid waste in a manner so as to prevent a fire, safety, or health hazard, in violation of 30 TEX. ADMIN. CODE § 330.22.
5. As evidenced by Finding of Fact No. 3.d., Mr. Tamez failed to immediately abate and contain a spill or discharge and cooperate fully with the Executive Director and the local incident command system, in violation of 30 TEX. ADMIN. CODE § 327.5(a) and TEX. WATER CODE § 26.266(a).
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Tamez for violations of the Texas Water Code and 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 Twenty-One Thousand Dollars (\$21,000) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Mr. Tamez has paid Eight Hundred Seventy-Five Dollars (\$875) of the administrative penalty. The remaining amount of Twenty Thousand One Hundred Twenty-Five Dollars (\$20,125) of the administrative penalty shall be payable in 23 monthly payments of Eight Hundred Seventy-Five Dollars (\$875) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Tamez fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. Tamez to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Tamez to timely and satisfactorily comply with all the terms of this Agreed Order.

III. ORDERING PROVISIONS

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

1. Mr. Tamez is assessed an administrative penalty in the amount of Twenty-One Thousand Dollars (\$21,000), as set forth in Section II, Paragraph 7 above, for violations of TCEQ rules and state statutes. The imposition of this administrative penalty and Mr. Tamez' compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: John Tamez dba Plastics International North, Docket No. 2005-1274-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. It is further ordered that Mr. Tamez shall undertake the following technical requirements:
 - a. Within five days after the effective date of this Agreed Order, submit notification to the Agency by providing the information listed in 30 TEX. ADMIN. CODE § 327.3(d), as required by 30 TEX. ADMIN. CODE § 327.3(b).
 - b. Within 15 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation and/or other records to demonstrate compliance with Ordering Provision No. 2.a.

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."

- c. Within 60 days after the effective date of this Agreed Order, ensure that all waste generated from the fire and other waste located at the Facility has been removed and properly disposed at a facility authorized to accept the type of waste being disposed.
- d. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, documentation of the dates the waste was removed from the Facility and copies of receipts from the permitted facility that received the waste and/or other records to demonstrate compliance with Ordering Provision No. 2.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 fine and imprisonment for knowing violations."

- e. Within 90 days after the effective date of this Agreed Order, submit an Affected Property Assessment Report (APAR), pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. The APAR should include an assessment of all property affected by the waste generated from the fire at the Facility, including but not limited to the on-site water well and on-site and off-site property potentially affected. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); Financial Assurance [30 TEX. ADMIN. CODE § 350.33(1)]; and Institutional Controls under Subchapter F.
- f. Within 105 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation to demonstrate compliance with Ordering Provision No. 2.e.

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."

- g. Submit all correspondence, reports, and documentation required by these Ordering Provisions to:

Work Leader
Team 5, Section III
Enforcement Division, MC 149
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Tamez. Mr. Tamez is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. Tamez 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, Mr. Tamez' failure to comply is not a violation of this Agreed Order. Mr. Tamez has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Tamez shall notify the Executive Director within seven days after Mr. Tamez 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 Mr. Tamez shall be made in writing to the Executive Director. Extensions are not effective until Mr. Tamez receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. 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. Tamez if the Executive Director determines that Mr. Tamez has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Tamez 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.
9. 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.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

FROM :

FAX NO. : 915 8869969

Nov. 30 2005 02:40PM P2

John Tamez dba Plastics International North
DOCKET NO. 2005-1274-MSW-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sillin

For the Executive Director

4/16/2008

Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of John Tamez dba Plastics International North. I am authorized to agree to the attached Agreed Order on behalf of John Tamez dba Plastics International North, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, John Tamez dba Plastics International North waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

John R. Tamez

Signature

11-08-05

Date

John R. Tamez

Name (printed or typed)
Authorized Representative
John Tamez dba Plastics International North

President

Title

