

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

DOCKET NO.: 2007-0641-MLM-E TCEQ ID: RN100944313 CASE NO.: 33644

RESPONDENT NAME: TEXAS INDUSTRIAL SCRAP IRON & METAL COMPANY, INC.

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 3800 North Commerce Street, Forth Worth, Tarrant County</p> <p><b>TYPE OF OPERATION:</b> Scrap metal recycling facility</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on May 12, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 767-3500  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  <b>TCEQ Enforcement Coordinator:</b> Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492  <b>TCEQ Regional Contact:</b> Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903  <b>Respondent:</b> Mr. August Stanislawski, President, Texas Industrial Scrap Iron &amp; Metal Company, Inc., 3801 North Commerce, Fort Worth, Texas 76106  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> October 5, 2006</p> <p><b>Date of NOEs/NOVs Relating to this Case:</b> January 12, 2007 (NOE)</p> <p><b>Background Facts:</b></p> <p>On October 29, 2007, the Executive Director filed the EDRP against the Respondent. More than 20 days have elapsed since the Respondent received notice of the EDRP provided by the Executive Director. The Respondent failed to file an Answer to the EDRP, 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><b>MLM</b></p> <p>1. Failed to obtain a registration for storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground [30 TEX. ADMIN. CODE § 328.60(a) and TEX. HEALTH &amp; SAFETY CODE § 361.112(a)].</p> <p>2. Failed to dispose of municipal solid waste and to prevent spills of industrial solid waste [30 TEX. ADMIN. CODE §§ 330.15(c) and 335.4].</p> <p>3. Failed to conduct a hazardous waste determination and waste classification [30 TEX. ADMIN. CODE § 335.62 and 40 CODE OF FEDERAL REGULATIONS § 262.11].</p>	<p><b>Total Assessed:</b> \$26,775</p> <p><b>Total Deferred:</b> \$0</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$26,775</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 proposed Order.</p> <p><b>Site Compliance History Classification:</b></p> <p><input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b></p> <p><input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Immediately:</p> <p>a. Cease the unauthorized disposal of municipal solid waste at the Facility;</p> <p>b. Develop and implement good housekeeping practices or procedures to reduce or eliminate exposure of garbage and rubbish to storm water runoff and develop Best Management Practices to reduce the discharge and potential discharge of pollutants in storm water; and</p> <p>c. Conduct a hazardous waste determination and waste classification on the 25 55-gallon drums of material stored at the Facility.</p> <p>2. Within 30 days:</p> <p>a. Label all containers;</p> <p>b. Remove the municipal solid waste disposed in the stormwater berm and properly dispose of the waste at an authorized facility; and</p> <p>c. Reduce the number of scrap tires being stored to 500 or less or obtain a storage registration for the Facility.</p> <p>3. Within 60 days, submit an Affected Property Assessment Report to the executive director for approval. 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; financial assurance; and Institutional Controls under Subchapter F.</p> <p>Within 75 days, submit written, notarized certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the above Ordering Provisions.</p>

4. Failed to develop and implement good housekeeping practices or procedures to reduce or eliminate exposure of garbage and rubbish to storm water runoff and to develop BMPs to reduce the discharge and potential discharge of pollutants in storm water [30 TEX. ADMIN. CODE § 281.25(a)(4) and TPDES Storm Water Permit Number TXR050242, Part III, Section A.5 (a) and (e)].

5. Failed to clearly label containers storing used oil [30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS § 279.22(c)(1)].



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

**TCEQ**

<b>DATES</b>	Assigned	7-May-2006	Screening	22-May-2007	EPA Due	
	PCW	4-Sep-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Texas Industrial Scrap Iron & Metal Company, Inc.		
Reg. Ent. Ref. No.	RN100944313		
Facility/Site Region	Dallas/Fort Worth	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	33644	No. of Violations	1
Docket No.	2007-0641-MLM-E	Order Type	1660
Media Program(s)	Used Oil	Enf. Coordinator	Michael Meyer
Multi-Media	IHW, WQ and MSW	EC's Team	EnforcementTeam 7
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$2,500

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$5,000
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	5% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$250
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Notes: The respondent received one NOV for same or similar violations.

<b>Culpability</b>	No	0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

	0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$6	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$100		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$5,250
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

<b>Final Penalty Amount</b>	\$5,250
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$5,250
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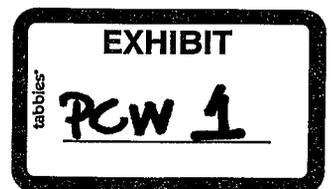
<b>DEFERRAL</b>	0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$5,250
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Screening Date 22-May-2007

Docket No. 2007-0641-MLM-E

PCW

Respondent Texas Industrial Scrap Iron & Metal Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 33644

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN100944313

Media [Statute] Used Oil

Enf. Coordinator Michael Meyer

**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%
<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) 5%

>> 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

The respondent received one NOV for same or similar violations.

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

<b>Screening Date</b> 22-May-2007	<b>Docket No.</b> 2007-0641-MLM-E	<b>PCW</b>			
<b>Respondent</b> Texas Industrial Scrap Iron & Metal Company, Inc.	<i>Policy Revision 2 (September 2002)</i>				
<b>Case ID No.</b> 33644	<i>PCW Revision May 25, 2007</i>				
<b>Reg. Ent. Reference No.</b> RN100944313					
<b>Media [Statute]</b> Used Oil					
<b>Enf. Coordinator</b> Michael Meyer					
<b>Violation Number</b> <input type="text" value="1"/>					
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 324.6 and 40 Code of Federal Regulation § 279.22 (c)(1)"/>				
<b>Violation Description</b>	<input type="text" value="Failed to clearly label containers storing used oil, as documented during an investigation conducted on October 5, 2006. Specifically, a Used Oil tote and 19 other containers which had accumulated along the southeast portion of the facility were not labeled."/>				
<b>Base Penalty</b>		<input type="text" value="\$2,500"/>			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
OR	<b>Harm</b>				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>
<b>&gt;&gt; Programmatic Matrix</b>					
	Falsification	Major	Moderate	Minor	<b>Percent</b> <input type="text" value="10%"/>
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	
<b>Matrix Notes</b>	<input type="text" value="100 percent of the rule requirement was not met."/>				
<b>Adjustment</b>		<input type="text" value="\$2,250"/>		<input type="text" value="\$250"/>	
<b>Violation Events</b>					
Number of Violation Events <input type="text" value="20"/>		Number of violation days <input type="text" value="229"/>			
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$5,000"/>		
	monthly	<input type="text"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
single event	x				
<input type="text" value="Twenty events are recommended (one for each container)."/>					
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>		
Estimated EB Amount <input type="text" value="\$6"/>		Violation Final Penalty Total <input type="text" value="\$5,000"/>			
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				<input type="text" value="\$5,000"/>	

### Economic Benefit Worksheet

**Respondent** Texas Industrial Scrap Iron & Metal Company, Inc.  
**Case ID No.** 33644  
**Reg. Ent. Reference No.** RN100944313  
**Media** Used Oil  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$100	6-Oct-2006	31-Dec-2007	1.2	\$6	n/a	\$6

Notes for DELAYED costs

Estimated cost to label containers. The Date Required is the October 5, 2006 investigation and the Final Date is the estimated compliance date.

**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

\$100

**TOTAL**

\$6



# Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	7-May-2006			
	PCW	4-Sep-2007	Screening	22-May-2007	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Texas Industrial Scrap Iron & Metal Company, Inc.		
Reg. Ent. Ref. No.	RN100944313		
Facility/Site Region	Dallas/Fort Worth	Major/Minor Source	Major

<b>CASE INFORMATION</b>				
Enf./Case ID No.	33644	No. of Violations	1	
Docket No.	2007-0641-MLM-E	Order Type	1660	
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Michael Meyer	
Multi-Media	IHW, MSW and WQ	EC's Team	Enforcement Team 7	
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

**Culpability** **Subtotal 4**

Notes

**Good Faith Effort to Comply** **Subtotal 5**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with x)

Notes

**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**

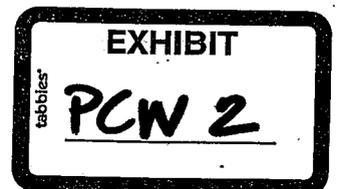
**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL** **Adjustment**

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

Notes

**PAYABLE PENALTY**



Screening Date 22-May-2007

Docket No. 2007-0641-MLM-E

PCW

Respondent Texas Industrial Scrap Iron & Metal Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 33644

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN100944313

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

### 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%
<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) 5%

>> 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

The respondent received one NOV for same or similar violations.

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

Screening Date 22-May-2007

Docket No. 2007-0641-MLM-E

PCW

Respondent Texas Industrial Scrap Iron & Metal Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 33644

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN100944313

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 328.60(a) and Tex. Health & Safety Code § 361.112(a)

Violation Description Failed to obtain a registration for storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground, as documented during an investigation conducted on October 5, 2006. Specifically, the Respondent was storing approximately 25 tons (50,000 pounds) of tire pieces on-site. At 20 pounds per whole tire this equates to approximately 2,500 scrap tires.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			25%

Matrix Notes 100 percent of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3 229 Number of violation days

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

Violation Base Penalty \$7,500

Three quarterly events are recommended from the October 5, 2006 investigation to the May 22, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$130

Violation Final Penalty Total \$7,500

This violation Final Assessed Penalty (adjusted for limits) \$7,500

## Economic Benefit Worksheet

**Respondent:** Texas Industrial Scrap Iron & Metal Company, Inc.

**Case ID No.:** 33644

**Reg. Ent. Reference No.:** RN100944313

**Media:** Municipal Solid Waste

**Violation No.:** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	\$2,000	6-Oct-2006	31-Dec-2007	1.2	\$124	n/a	\$124
Permit Costs	\$100	6-Oct-2006	31-Dec-2007	1.2	\$6	n/a	\$6
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to register as a scrap tire storage facility or to remove the equivalent of 2,000 scrap tires from the Facility to reduce the total number of scrap tires to 500 or less. The Date Required is the October 5, 2006 investigation and the Final Date is the estimated compliance date.

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

\$2,100

**TOTAL**

\$130



# Penalty Calculation Worksheet (PCW)

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	7-May-2006	<b>Screening</b>	22-May-2007	<b>EPA Due</b>	
	<b>PCW</b>	4-Sep-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Texas Industrial Scrap Iron & Metal Company, Inc.
<b>Reg. Ent. Ref. No.</b>	RN100944313
<b>Facility/Site Region</b>	Dallas/Fort Worth
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	33644	<b>No. of Violations</b>	3
<b>Docket No.</b>	2007-0641-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Industrial Solid Waste	<b>Enf. Coordinator</b>	Michael Meyer
<b>Multi-Media</b>	IHW, MSW and WQ	<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$</b>	Limit Minimum \$0	<b>Maximum</b>	\$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**  Enhancement **Subtotals 2, 3, & 7**

**Notes**

**Culpability**   Enhancement **Subtotal 4**

**Notes**

**Good Faith Effort to Comply**  Reduction **Subtotal 5**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/> X	(mark with x)

**Notes**

**Total EB Amounts**  **Subtotal 6**   
**Approx. Cost of Compliance**  **0% Enhancement\***  
*\*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**

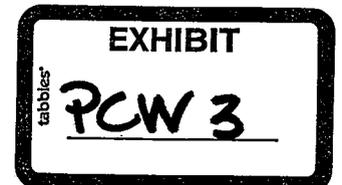
**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

**Notes**

**PAYABLE PENALTY**



Screening Date 22-May-2007

Docket No. 2007-0641-MLM-E

PCW

Respondent Texas Industrial Scrap Iron & Metal Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 33644

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN100944313

Media [Statute] Industrial Solid Waste

Enf. Coordinator Michael Meyer

### 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

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The respondent received one NOV for same or similar violations.

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

Screening Date 22-May-2007

Docket No. 2007-0641-MLM-E

PCW

Respondent Texas Industrial Scrap Iron & Metal Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 33644

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN100944313

Media [Statute] Industrial Solid Waste

Enf. Coordinator Michael Meyer

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 330.15(c) and 335.4

Violation Description

Failed to properly dispose of municipal solid waste and to prevent spills of industrial waste, as documented during an investigation conducted on October 5, 2006. Specifically, the investigator documented that the Respondent had: 1) disposed of various wastes including metal and wood scraps, tire pieces and other rubbish by incorporating these materials into a stormwater control berm constructed along the east side of the property; and 2) contaminated soil from spills located at several locations at the Facility including the concrete pad along the east central portion of the property, a welding area along the northern half of the property, near the shop building on the south-central portion of the property and near the southwestern corner of the main office. Analysis of soil samples collected from the welding area on the north side of the property indicated total petroleum hydrocarbons as high as 93,000 milligrams per kilogram.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

100 percent of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3

229 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

Three quarterly events are recommended from the October 5, 2006 investigation to the May 22, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$638

Violation Final Penalty Total \$7,500

This violation Final Assessed Penalty (adjusted for limits) \$7,500

## Economic Benefit Worksheet

**Respondent:** Texas Industrial Scrap Iron & Metal Company, Inc.

**Case ID No.** 33644

**Reg. Ent. Reference No.** RN100944313

**Media:** Industrial Solid Waste

**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	6-Oct-2006	15-Jan-2008	1.3	\$638	n/a	\$638

**Notes for DELAYED costs:** Failed to conduct an Affected Property Assessment of the contaminated soil at the property. The Date Required is the October 6, 2006 investigation and Final Date is the estimated compliance date.

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:**

<b>Approx. Cost of Compliance</b>	\$10,000	<b>TOTAL</b>	\$638
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Screening Date 22-May-2007

Docket No. 2007-0641-MLM-E

PCW

Respondent Texas Industrial Scrap Iron & Metal Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 33644

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN100944313

Media [Statute] Industrial Solid Waste

Enf. Coordinator Michael Meyer

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 335.62 and 40 Code of Federal Regulations § 262.11

Violation Description

Failed to conduct a hazardous waste determination and waste classification, as documented during an investigation conducted on October 5, 2006. Specifically, approximately 25 55-gallon drums of a waste without a hazardous waste determination were stored on a concrete pad in the east-central portion of the property.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	Potential	x			

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 229

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

Violation Base Penalty \$2,500

One event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$638

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

## Economic Benefit Worksheet

**Respondent** Texas Industrial Scrap Iron & Metal Company, Inc.  
**Case ID No.** 33644  
**Reg. Ent. Reference No.** RN100944313  
**Media** Industrial 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
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)	\$450	5-Oct-2006	15-Jan-2008	1.3	\$638	n/a	\$638

Notes for DELAYED costs

Failure to conduct a waste determination on the 25 drums of unknown waste. The Date Required is the October 5, 2006 investigation and the Final Date is the estimated compliance date.

### 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

\$450

**TOTAL**

\$638

Screening Date 22-May-2007

Docket No. 2007-0641-MLM-E

PCW

Respondent Texas Industrial Scrap Iron & Metal Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 33644

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN100944313

Media [Statute] Industrial Solid Waste

Enf. Coordinator Michael Meyer

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and TPDES Storm Water Permit No. TXR05O242, Part III, Section A.5. (a) and (e)

Violation Description

Failed to develop and implement good housekeeping practices or procedures to reduce or eliminate exposure of garbage and rubbish to storm water runoff and to develop Best Management Practices (BMPs) to reduce the discharge and potential discharge of pollutants in storm water, as documented during an investigation conducted on October 5, 2006. Specifically, it was noted that fluids had discharged onto the ground from engine parts and other scrap materials which were stockpiled at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

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 as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

229 Number of violation days

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

Violation Base Penalty \$3,000

Three quarterly events are recommended from the October 5, 2006 investigation to the May 22, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$62

Violation Final Penalty Total \$3,150

This violation Final Assessed Penalty (adjusted for limits) \$3,150

## Economic Benefit Worksheet

**Respondent:** Texas Industrial Scrap Iron & Metal Company, Inc.  
**Case ID No.:** 33644  
**Reg. Ent. Reference No.:** RN100944313  
**Media:** Industrial 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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

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	5-Oct-2006	31-Dec-2007	1.2	\$62	n/a	\$62

Notes for DELAYED costs

Estimated cost to develop good housekeeping and implement best management practices to prevent the release of contaminated stormwater 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/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**

\$62

## Compliance History

Customer/Respondent/Owner-Operator:	CN601055510 Texas Industrial Scrap Iron & Metal Company, Inc.	Classification: AVERAGE	Rating: 11.83
Regulated Entity:	RN100944313 TEXAS INDUSTRIAL SCRAP IRON AND METAL	Classification: AVERAGE	Site Rating: 16.50
ID Number(s):	STORMWATER PERMIT AIR NEW SOURCE PERMITS ACCOUNT NUMBER MUNICIPAL SOLID WASTE DISPOSAL PERMIT		TXR050000 TA0194C 455040144
Location:	3800 N COMMERCE ST, FORT WORTH, TX, 76106	Rating Date: 9/1/2006	Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	June 22, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 23, 2002 to June 22, 2007		

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

Name: Michael Meyer Phone: (512) 239-4492

### 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>Texas Industrial Scrap Iron &amp; Metal Company, Inc.</u> |
| 4. If Yes, who was/were the prior owner(s)?  | <u>Industrial Scrap Materials, Inc.</u>                      |
| 5. When did the change(s) in ownership occur?  | <u>07/21/2003</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.)
- |   |            |          |  |
|---|------------|----------|--|
| 1 | 08/18/2003 | (148993) |  |
| 2 | 01/12/2007 | (515622) |  |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |                 |          |
|--------------|---|-----------------|----------|
| Date:        | 05/23/2005  | (564791)        |          |
| Self Report? | NO  | Classification: | Minor    |
| Citation:    | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)   |                 |          |
| Rqmt Prov:   | PERMIT III.A.2(a) & (b)   |                 |          |
| Description: | Failure to update the pollution prevention team in the Storm Water Pollution Prevention Plan (SWP3).  |                 |          |
| Self Report? | NO  | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)   |                 |          |
| Rqmt Prov:   | PERMIT III.A.3(c)   |                 |          |
| Description: | Failure to complete an investigation for non-storm water discharges and prepare a Non-Storm Water Certification within ninety (90) days of filing a Notice of Intent for permit coverage. |                 |          |
| Self Report? | NO  | Classification: | Minor    |
| Citation:    | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)   |                 |          |
| Rqmt Prov:   | PERMIT III.A.4(b) and (c)   |                 |          |
| Description: | Failure to narratively describe or show on the site map the direction of storm water flow from the trash storage area in the SWP3.  |                 |          |
| Self Report? | NO  | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)   |                 |          |
| Rqmt Prov:   | PERMIT III.A.5(g)   |                 |          |
| Description: | Failure to conduct periodic inspections according to the requirements of the MSGP   |                 |          |

for all quarters since the permit was issued.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: PERMIT III.A.7

Description: Failure to conduct annual comprehensive site evaluations for all years since the Permit was issued.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: PERMIT III.D.1(c)

Description: Failure to conduct annual monitoring for metals for all years since the Permit was issued.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: PERMIT V.N.5

Description: Failure to conduct benchmark monitoring for all required periods during calendar year 2005.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: PERMIT III.A.5(e)

Description: Failure to develop and/or implement Best Management Practices (BMPs) to address potential pollutants from the facility.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: PERMIT III.A.5(a)

Description: Failure to develop and/or implement good housekeeping practices or procedures to reduce or eliminate the exposure of garbage and refuse to storm water runoff.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
30 TAC Chapter 324, SubChapter A 324.6  
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)(1)

Rqmt Prov: PERMIT III.A.5(b)(3)

Description: Failure to label Used Oil drums accumulated at site.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: PERMIT III.A.5(H)

Description: Failure to conduct quarterly visual monitoring for all quarters since the Permit was issued.

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 TEXAS  
INDUSTRIAL SCRAP IRON &  
METAL COMPANY, INC.;  
RN100944313

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2007-0641-MLM-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 chs. 7 and 26, 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 Texas Industrial Scrap Iron & Metal Company, Inc. ("Texas Industrial").

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

**FINDINGS OF FACT**

1. Texas Industrial owns and/or operates a scrap metal recycling facility at 3800 North Commerce Street in Fort Worth, Tarrant County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste, industrial solid waste, and industrial hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Facility has discharged waste into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
4. During an inspection conducted on October 5, 2006, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Texas Industrial:
  - a. Failed to obtain a registration for storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground. Specifically, Texas Industrial was storing approximately 25 tons (50,000 pounds) of tire pieces on-site. At 20 pounds per whole tire this equates to approximately 2,500 scrap tires.

- b. Failed to dispose of municipal solid waste and to prevent spills of industrial solid waste. Specifically, the investigator documented that Texas Industrial had: 1) disposed of various wastes including metal and wood scraps, tire pieces and other rubbish by incorporating these materials into a stormwater control berm constructed along the east side of the property; and 2) contaminated soil from spill located at several locations at the Facility including the concrete pad along the east central portion of the property, a welding area along the northern half of the property, near the shop building on the south-central portion of the property and near the southwestern corner of the main office. Analysis of soil samples collected from the welding area on the north side of the property indicated total petroleum hydrocarbons as high as 93,000 milligrams per kilogram.
  - c. Failed to conduct a hazardous waste determination and waste classification. Specifically, approximately 25 55-gallon drums of a waste without hazardous waste determination were stored on a concrete pad in the east-central portion of the property.
  - d. Failed to develop and implement good housekeeping practices or procedures to reduce or eliminate exposure of garbage and rubbish to storm water runoff and to develop Best Management Practices ("BMPs") to reduce the discharge and potential discharge of pollutants in storm water. Specifically, it was noted that fluids had discharged onto the ground from engine parts and other scrap materials which were stockpiled at the Facility.
  - e. Failed to clearly label containers storing used oil. Specifically, a Used Oil tote and 19 other containers which had accumulated along the southeast portion of the facility were not labeled.
5. Texas Industrial received notice of the violations on or about January 17, 2007.
  6. 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 Texas Industrial Scrap Iron & Metal Company, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on October 29, 2007.
  7. By letter dated October 29, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Texas Industrial with notice of the EDPRP. According to the return receipt "green card", Texas Industrial received notice of the EDPRP on October 30, 2007, as evidenced by the signature on the card.

8. More than 20 days have elapsed since Texas Industrial received notice of the EDPRP, provided by the Executive Director. Texas Industrial 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, 2, and 3 Texas Industrial is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 4.a, Texas Industrial violated 30 TEX. ADMIN. CODE § 328.60(a) and TEX. HEALTH & SAFETY CODE § 361.112(a) by failing to obtain a registration for storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground.
3. As evidenced by Finding of Fact No. 4.b., Texas Industrial violated 30 TEX. ADMIN. CODE §§ 330.15(c) and 335.4 by failing to dispose of municipal solid waste and to prevent spills of industrial solid waste.
4. As evidenced by Finding of Fact No. 4.c., Texas Industrial violated 30 TEX. ADMIN. CODE § 335.62 and 40 CODE OF FEDERAL REGULATIONS § 262.11 by failing to conduct a hazardous waste determination and waste classification.
5. As evidenced by Finding of Fact No. 4.d., Texas Industrial violated 30 TEX. ADMIN. CODE § 281.25(a)(4) and TPDES Storm Water Permit No. TXR05O242, Part III, Section A.5. (a) and (e) by failing to develop and implement good housekeeping practices or procedures to reduce or eliminate exposure of garbage and rubbish to storm water runoff and to develop BMPs to reduce the discharge and potential discharge of pollutants in storm water.
6. As evidenced by Finding of Fact No. 4.e., Texas Industrial violated 30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS § 279.22(c)(1) by failing to clearly label containers storing used oil.
7. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Texas Industrial with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
8. As evidenced by Finding of Fact No. 8, Texas Industrial has 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 Texas Industrial and assess the penalty recommended by the Executive Director.

9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Texas Industrial 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.
10. An administrative penalty in the amount of twenty-six thousand seven hundred seventy-five dollars (\$26,775.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. 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. Texas Industrial is assessed an administrative penalty in the amount of twenty-six thousand seven hundred seventy-five dollars (\$26,775.00) for violations of statutes and rules of the TCEQ. The payment of this administrative penalty and Texas Industrial'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: Texas Industrial Scrap Iron & Metal Company, Inc.; Docket No. 2007-0641-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. Texas Industrial shall undertake the following technical requirements:

- a. Immediately upon the effective date of the Commission Order:
  - i. Cease the unauthorized disposal of municipal solid waste at the Facility;
  - ii. Develop and implement good housekeeping practices or procedures to reduce or eliminate the exposure of garbage and rubbish to stormwater runoff and develop Best Management Practices to reduce the discharge and potential discharge of pollutants in stormwater; and
  - iii. Conduct a hazardous waste determination and waste classification on the 25 55-gallon drums of material stored at the Facility as required under 30 TEX. ADMIN. CODE § 335.62 and 40 CODE OF FEDERAL REGULATIONS § 262.11 and dispose of the waste at an authorized facility.
  
- b. Within 30 days after the effective date of the Commission Order:
  - i. Label all containers in accordance with 30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS § 279.22(c)(1);
  - ii. Remove the municipal solid waste disposed in the stormwater berm and properly dispose of the waste at an authorized facility; and
  - iii. Reduce the number of scrap tires being stored to 500 or less or obtain a storage registration for the Facility as required under 30 TEX. ADMIN. CODE § 328.60(a) and TEX. HEALTH & SAFETY CODE § 361.112(a).
  
- c. Within 60 days after the effective date of the Commission Order, submit an Affected Property Assessment Report, pursuant to 30 TEXAS. ADMIN. CODE § 350.91, to the executive director for approval. 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 and shall be submitted to:

Manager  
Environmental Cleanup, MC 221  
Remediation Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- 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, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 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.”

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  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Texas Industrial. Texas Industrial 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 Texas Industrial 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, Texas Industrial's failure to comply is not a violation of this Order. Texas Industrial shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Texas Industrial shall notify the Executive Director within seven days after Texas Industrial 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 Texas Industrial shall be made in writing to the Executive Director. Extensions are not effective until Texas Industrial 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 Texas Industrial if the Executive Director determines that Texas Industrial 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.

Texas Industrial Scrap Iron & Metal Company, Inc.  
DOCKET NO. 2007-0641-MLM-E  
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**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF GARY K. SHIU**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Gary K. Shiu. 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, I 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 Texas Industrial Scrap Iron & Metal Company, Inc.” (the “EDPRP”) with the Office of the Chief Clerk on October 29, 2007.

I sent the EDPRP to Texas Industrial at its last known address on October 29, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Texas Industrial received notice of the EDPRP on October 30, 2007, as evidenced by the signature on the card.

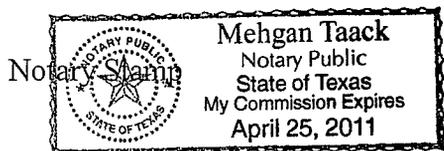
More than 20 days have elapsed since Texas Industrial received notice of the EDPRP. Texas Industrial failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



\_\_\_\_\_  
Gary K. Shiu  
Attorney  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 11<sup>th</sup> day of MARCH, A.D., 2008.



Mehgan Taack  
Notary Signature