

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2008-1140-MLM-E TCEQ ID: RN105508394 CASE NO.: 36204**

**RESPONDENT NAME: RUBY MCPIKE**

<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 checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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><b>SITE WHERE VIOLATIONS OCCURRED:</b> 14000 Block of Rollins Road, Winnie, Jefferson County</p> <p><b>TYPE OF OPERATION:</b> Unauthorized municipal solid waste site</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> Four complaints were received alleging that tires were being burned at the site. Complainants alleged that tires were routinely burned at the site and that thick, black smoke coming from the site made their eyes burn and made it hard to breathe even several days after the fire department extinguished the flames. The co-owner of the site entered into an agreed order (Docket No. 2009-1438-MLM-E).</p> <p><b>INTERESTED PARTIES:</b> The complainants have not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired November 16, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Ms. Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693                  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Mr. Clinton Sims, Waste Enforcement Section, MC 169, (512) 239-6933  <b>TCEQ Regional Contact:</b> Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838  <b>Respondent:</b> Ms. Ruby McPike, 6114 West Republic Road, Jacksonville, Arkansas 72076  <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 checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Dates of Complaints Relating to this Case:</b>  April 29, 2008, May 27, 2008, and May 29, 2008</p> <p><b>Date of Investigation Relating to this Case:</b>  June 2, 2008</p> <p><b>Date of NOE Relating to this Case:</b>  June 9, 2008</p> <p><b>Background Facts:</b>  The EDPRP was filed against Respondent and a co-owner of the Site on October 3, 2008. The Respondent and the co-owner both filed answers and the case was referred to SOAH. Notice of the preliminary hearing was mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail was not returned. On April 16, 2009, the ALJ convened the preliminary hearing. The co-owner appeared through her attorney, but the Respondent failed to appear.</p> <p>An evidentiary hearing was scheduled for September 17, 2009. On April 17, 2009, the SOAH clerk mailed notice of the evidentiary hearing to the Respondent via first-class mail, postage pre-paid. On April 20, 2009, the ED mailed notice of the evidentiary hearing to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail was not returned. On May 20, 2009, the ED mailed a second notice of the evidentiary hearing to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the evidentiary hearing on May 22, 2009.</p> <p>On September 15, 2009, the co-owner of the Site signed an Agreed Order. The case against the co-owner was severed, assigned a new docket number (2009-1438-MLM-E), and remanded to the ED. On September 17, 2009, the ALJ convened the evidentiary hearing, but the Respondent failed to appear. The ED requested that the matter be remanded back to the ED and dismissed from the SOAH docket so that a Default Order may be entered.</p> <p><b>Current Compliance Status:</b>  Not yet in compliance.</p> <p><b>MLM:</b></p> <p>1. Failed to comply with the general prohibition on outdoor burning [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2. Failed to prevent the unauthorized disposal of scrap tires [30 TEX. ADMIN. CODE § 330.15(a)].</p>	<p><b>Total Assessed:</b> \$8,475</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$8,475</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" 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> <ol style="list-style-type: none"> <li>1. Immediately: <ol style="list-style-type: none"> <li>a. Cease all unauthorized burning of scrap tires at the Site; and</li> <li>b. Cease disposing of any additional scrap tires at the Site.</li> </ol> </li> <li>2. Within 30 days, remove all scrap tires and dispose of the tires at an authorized facility.</li> <li>3. Within 45 days, submit written certification to demonstrate compliance.</li> </ol>

**Penalty Calculation Worksheet (PCW)**  
 Policy Revision 2 (September 2002) PCW Revision June 12, 2008

**TCEQ**  
**DATES** Assigned  PCW  Screening  EPA Due

**RESPONDENT/FACILITY INFORMATION**  
 Respondent   
 Reg. Ent. Ref. No.   
 Facility/Site Region  Major/Minor Source

**CASE INFORMATION**

Enf./Case ID No.	<input type="text" value="36204"/>	No. of Violations	<input type="text" value="2"/>
Docket No.	<input type="text" value="2008-1140-MLM-E"/>	Order Type	<input type="text" value="1660"/>
Media Program(s)	<input type="text" value="Municipal Solid Waste"/>	Government/Non-Profit	<input type="text" value="No"/>
Multi-Media	<input type="text" value="Air"/>	Enf. Coordinator	<input type="text" value="Clinton Sims"/>
		EC's Team	<input type="text" value="Enforcement Team 7"/>

Admin. Penalty \$ Limit Minimum  Maximum

**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 Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**   
 \*Capped at the Total EB \$ Amount

Total EB Amounts	<input type="text" value="\$5,275"/>
Approx. Cost of Compliance	<input type="text" value="\$77,250"/>

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**   
 Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

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

**DEFERRAL**  Reduction **Adjustment**   
 Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

**PAYABLE PENALTY**

**Screening Date** 3-Jul-2008

**Docket No.** 2008-1140-MLM-E

**PCW**

**Respondent** Ruby McPike and Patricia Nelson

*Policy Revision 2 (September 2002)*

**Case ID No.** 36204

*PCW Revision June 12, 2008*

**Reg. Ent. Reference No.** RN105508394

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Clinton Sims

**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 submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%

*Please Enter Yes or No*

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 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%

<b>Screening Date</b> 3-Jul-2008	<b>Docket No.</b> 2008-1140-MLM-E	<b>PCW</b>		
<b>Respondent</b> Ruby McPike and Patricia Nelson		<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 36204		<i>PCW Revision June 12, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN105508394				
<b>Media [Statute]</b> Municipal Solid Waste				
<b>Enf. Coordinator</b> Clinton Sims				
<b>Violation Number</b>	<input type="text" value="1"/>			
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 111.201 and Tex. Health &amp; Safety Code § 382.085(b)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to comply with the general prohibition on outdoor burning. Specifically, burning piles of shredded tires were observed during an investigation conducted on June 2, 2008."/>			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	Actual	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="25%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment has been exposed to significant amounts of pollutants which do not exceed protective levels."/>			
<b>Adjustment</b>		<input type="text" value="\$7,500"/>		
		<input type="text" value="\$2,500"/>		
<b>Violation Events</b>				
<b>Number of Violation Events</b>		<input type="text" value="1"/>	<b>Number of violation days</b>	
		<input type="text" value="1"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b>	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="text" value="x"/>		
<input type="text" value="One single event is recommended."/>				
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>	
		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="text" value="x"/>	<input type="text" value="(mark with x)"/>		
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
<b>Violation Subtotal</b>		<input type="text" value="\$2,500"/>		
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		<input type="text" value="\$2,039"/>	<b>Violation Final Penalty Total</b>	
			<input type="text" value="\$2,825"/>	
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>		
		<input type="text" value="\$2,825"/>		

## Economic Benefit Worksheet

Respondent Ruby McPike and Patricia Nelson

Case ID No. 36204

Reg. Ent. Reference No. RN105508394

Media Municipal Solid Waste

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal	\$2,250	2-Jun-2008	13-Apr-2009	0.86	\$97	\$1,942	\$2,039
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to properly dispose of approximately 1,500 scrap tires that were disposed of by burning. The Date Required is the investigation date and the Final Date is the expected date of compliance.

Approx. Cost of Compliance

\$2,250

**TOTAL**

\$2,039

<b>Screening Date</b> 3-Jul-2008	<b>Docket No.</b> 2008-1140-MLM-E	<b>PCW</b>
<b>Respondent</b> Ruby McPike and Patricia Nelson	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 36204	<i>PCW Revision June 12, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN105508394		
<b>Media [Statute]</b> Municipal Solid Waste		
<b>Enf. Coordinator</b> Clinton Sims		
<b>Violation Number</b> <input type="text" value="2"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 330.15(a)	
<b>Violation Description</b>	Failed to prevent the unauthorized disposal of scrap tires, as documented during an investigation conducted on June 2, 2008. Specifically, approximately 50,000 scrap tires were disposed of at the site.	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>		
<b>OR</b>	<b>Release</b>	<b>Harm</b>
	Major      Moderate      Minor	
Actual	<input type="text"/>	<input checked="" type="checkbox"/>
Potential	<input type="text"/>	<input type="text"/>
		<b>Percent</b> <input type="text" value="25%"/>
<b>&gt;&gt; Programmatic Matrix</b>		
	Major      Moderate      Minor	
	<input type="text"/>	<input type="text"/>
		<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	Human health or the environment has been exposed to significant amounts of pollutants which do not exceed protective levels.	
<b>Adjustment</b>		<input type="text" value="\$7,500"/>
		<input type="text" value="\$2,500"/>
<b>Violation Events</b>		
<b>Number of Violation Events</b>	<input type="text" value="2"/>	<input type="text" value="31"/> <b>Number of violation days</b>
<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>
		<b>Violation Base Penalty</b> <input type="text" value="\$5,000"/>
Two monthly events are recommended from the June 2, 2008 investigation date to the July 3, 2008 screening date.		
<b>Good Faith Efforts to Comply</b>		
<b>0.0% Reduction</b>		<input type="text" value="\$0"/>
	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"/>	(mark with x)
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.	
<b>Violation Subtotal</b>		<input type="text" value="\$5,000"/>
<b>Economic Benefit (EB) for this violation</b>		
<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>	<input type="text" value="\$3,236"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$5,650"/>
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$5,650"/>

## Economic Benefit Worksheet

**Respondent** Ruby McPike and Patricia Nelson  
**Case ID No.** 36204  
**Reg. Ent. Reference No.** RN105508394  
**Media** Municipal Solid Waste  
**Violation No.** 2

<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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$75,000	2-Jun-2008	13-Apr-2009	0.86	\$3,236	n/a	\$3,236
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**  
 Estimated cost to remove and properly dispose of approximately 50,000 scrap tires. The Date Required is the investigation date and the Final Date is the expected date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>							
<b>ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)</b>							
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance	\$75,000	<b>TOTAL</b>	\$3,236
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# Compliance History

Customer/Respondent/Owner-Operator: CN603391491 MCPIKE, RUBY Classification: Rating:  
Regulated Entity: RN105508394 MCPIKE TIRE SITE Classification: Site Rating:

ID Number(s):

Location: 14000 BLK OF ROLLINS RD, WINNIE, TX,

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: August 14, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 14, 2003 to August 14, 2008

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

Name: Clinton Sims Phone: (512) 239-6933

## 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?    | No         |
| 3. If Yes, who is the current owner?   | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)?  | N/A        |
| 5. When did the change(s) in ownership occur?  | N/A        |

### 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 06/09/2008 (681899)  
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- 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  
RUBY MCPIKE:  
RN105508394

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2008-1140-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 ch. 7, TEX. HEALTH & SAFETY CODE chs. 361 and 382, 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 Ruby McPike ("Ms. McPike").

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

**FINDINGS OF FACT**

1. Ms. McPike co-owns an unauthorized municipal solid waste site located at the 14000 Block of Rollins Road, Winnie, Jefferson County, Texas (the "Site").
2. The Site involves the management and/or disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361, and the Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an investigation conducted on June 2, 2008, a TCEQ Beaumont Regional Office investigator documented that Ms. McPike:
  - a. Failed to comply with the general prohibition on outdoor burning. Specifically, burning piles of shredded tires were observed.
  - b. Failed to prevent the unauthorized disposal of scrap tires. Specifically, approximately 50,000 tires were disposed of at the Site.

4. Ms. McPike received notice of the violations on or about June 14, 2008.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Ruby McPike and Patricia Nelson" (the "EDPRP") in the TCEQ Chief Clerk's office on October 22, 2008.
6. By letter dated October 22, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. McPike with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Ms. McPike received notice of the EDPRP.
7. Ms. McPike and co-owner of the Site, Patricia Nelson ("Ms. Nelson") submitted answers requesting hearings on November 17, 2008, and October 27, 2008, respectively. Pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings ("SOAH") on January 20, 2009.
8. On March 3, 2009, the TCEQ Chief Clerk mailed the Notice of the April 23, 2009, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Ms. McPike and Ms. Nelson. According to the return receipt "green card," Ms. McPike received notice of the April 23, 2009, preliminary hearing on March 5, 2009, as evidenced by the signature on the card.
9. On April 7, 2009, the Administrative Law Judge ("ALJ") issued Order No. 2 granting Ms. Nelson's request to re-schedule the preliminary hearing and to appear by telephone, and re-scheduled the preliminary hearing for April 16, 2009. Notice of the April 16, 2009, preliminary hearing was mailed to Ms. McPike via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Ms. McPike received notice of the preliminary hearing date.
10. On April 16, 2009, the ALJ convened the preliminary hearing. Ms. Nelson appeared through her attorney, but Ms. McPike failed to appear.
11. On April 17, 2009, the ALJ issued Order No. 3 Documenting Preliminary Hearing, Approving Schedule, and Notice of Hearing on the Merits. The SOAH clerk mailed a copy of Order No. 3 to Ms. McPike at her last known address via first class mail, postage pre-paid. Included in Order No. 3 was a notice that read:

IF A RESPONDENT FAILS TO APPEAR FOR HEARING, THE JUDGE MAY PROCEED IN THE RESPONDENT'S ABSENCE ON A DEFAULT BASIS; THE FACTUAL ALLEGATIONS LISTED IN THE PREVIOUSLY ISSUED NOTICE OF HEARING, INCLUDING ANY DOCUMENTS INCORPORATED BY REFERENCE, MAY BE DEEMED ADMITTED AS TRUE; AND THE RELIEF SOUGHT IN THE NOTICE OF HEARING, INCLUDING ANY DOCUMENTS INCORPORATED BY REFERENCE, MAY BE GRANTED BY DEFAULT.

12. On April 20, 2009, the ED also mailed notice of the September 17, 2009, evidentiary hearing and a copy of Order No. 3 to Ms. McPike via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Ms. McPike received notice of the evidentiary hearing.
13. On May 20, 2009, the ED again mailed notice of the September 17, 2009, evidentiary hearing and a copy of Order No. 3 to Ms. McPike via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Ms. McPike received notice of the September 17, 2009, evidentiary hearing on May 22, 2009, as evidenced by the signature on the card.
14. On September 15, 2009, Ms. Nelson submitted a signed Agreed Order with an initial penalty payment. The same day the Executive Director requested that the ALJ dismiss Ms. Nelson from the hearing proceedings at SOAH. The ALJ granted the motion on September 16, 2009. The case against Ms. Nelson was severed from the case against Ms. McPike, and Ms. Nelson's case was assigned TCEQ Docket No. 2009-1438-MLM-E.
15. On September 17, 2009, the ALJ convened the evidentiary hearing, but Ms. McPike failed to appear. The Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Ms. McPike is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., Ms. McPike violated 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to comply with the general prohibition on outdoor burning.
3. As evidenced by Finding of Fact No. 3.b., Ms. McPike violated 30 TEX. ADMIN. CODE § 330.15(a) by failing to prevent the unauthorized disposal of scrap tires.
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Ms. McPike with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 7, Ms. McPike filed an answer to the EDPRP requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 30 TEX. ADMIN. CODE § 70.109.
6. As evidenced by Finding of Fact No. 9, Ms. McPike was provided proper notice of the preliminary hearing pursuant to TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058 and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
7. As evidenced by Finding of Fact Nos. 11, 12 and 13, Ms. McPike was provided proper notice of the evidentiary hearing pursuant to TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058 and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
8. As evidenced by Finding of Fact No. 15, Ms. McPike failed to appear for the evidentiary hearing. Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, 1 TEX. ADMIN. CODE § 155.501(a) and (c), and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against Ms. McPike 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 Ms. McPike 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 eight thousand four hundred seventy-five dollars (\$8,475.00) 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. Ms. McPike is assessed an administrative penalty in the amount of eight thousand four hundred seventy-five dollars (\$8,475.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Ms. McPike'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: Ruby McPike; Docket No. 2008-1140-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. Ms. McPike shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Ms. McPike shall cease all unauthorized burning of scrap tires at the Site.
  - b. Immediately upon the effective date of this Order, Ms. McPike shall cease disposing of any additional scrap tires at the Site.
  - c. Within 30 days of the effective date of this Order, Ms. McPike shall remove all scrap tires and dispose of the tires at an authorized facility.
  - d. Within 45 days after the effective date of this Order, Ms. McPike shall 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.

Ms McPike shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. 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:

Mr. Derek Eades, Waste Section Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1830

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Ms. McPike. Ms. McPike is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Ms. McPike 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, Ms. McPike's failure to comply is not a violation of this Order. Ms. McPike shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Ms. McPike shall notify the Executive Director within seven days after Ms. McPike 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 Ms. McPike shall be made in writing to the Executive Director. Extensions are not effective until Ms. McPike 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 Ms. McPike if the Executive Director determines that Ms. McPike 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 this Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Ruby McPike  
Docket No. 2008-1140-MLM-E  
Page 8

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF STEPHANIE J. FRAZEE**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Stephanie J. Frazee. 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 Ruby McPike and Patricia Nelson” (the “EDPRP”) with the Office of the Chief Clerk on October 22, 2008.

I sent the EDPRP to Ms. McPike at her last known address on October 22, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Ms. McPike received notice of the EDPRP.

Ms. McPike submitted a response to the EDPRP on November 17, 2008. I referred the matter to the State Office of Administrative Hearing (“SOAH”) on January 20, 2009. On April 8, 2009, I mailed notice of the April 16, 2009, preliminary hearing to Ms. McPike via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Ms. McPike received notice of the preliminary hearing date.

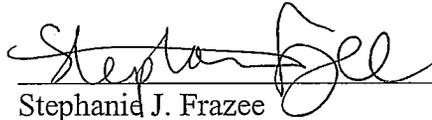
On April 16, 2009, the Administrative Law Judge (“ALJ”) convened the preliminary hearing, but Ms. McPike failed to appear.

On April 20, 2009, I mailed notice of the evidentiary hearing to Ms. McPike via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Ms. McPike received notice of the evidentiary hearing date.

On May 20, 2009, I mailed notice of the evidentiary hearing to Ms. McPike again via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Ms. McPike received notice of the September 17, 2009, evidentiary hearing on May 22, 2009, as evidenced by the signature on the card.

On September 17, 2009, the Administrative Law Judge (“ALJ”) convened the evidentiary hearing, but Ms. McPike failed to appear.

At that hearing, I requested and received a remand from the ALJ pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), which gives the ALJ the authority to remand the case back to the agency “to allow the agency to dispose of the case on a default basis under TEX. GOV’T CODE § 2001.056 and the referring agency’s rules.” Pursuant to TEX. GOV’T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against Ms. McPike and assess the penalty recommended by the Executive Director.



Stephanie J. Frazee  
Attorney  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 20<sup>th</sup> day of October, A.D., 2009.



Notary Signature

Notary Stamp

