

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0866-MSW-E TCEQ ID: RN104747639 CASE NO.: 33640
RESPONDENT NAME: RODOLFO RUIZ

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 31875 Farm-to-Market Road 3069, Los Fresnos, Cameron County</p> <p>TYPE OF OPERATION: Unauthorized tire storage/disposal site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 3, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. John Shelton, Waste Enforcement Section, MC 128, (512) 239-2563 TCEQ Regional Contact: Mr. Jaime Garza, Harlingen Regional Office, MC R-15, (956) 430-6048 Respondent: Rodolfo Ruiz, 31875 Farm-to-Market Road 3069, Los Fresnos, Texas 78556 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 15, 2007</p> <p>Date of NOE Relating to this Case: April 6, 2007</p> <p>Background Facts: The EDPRP was filed on October 1, 2007, and mailed 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 EDPRP on October 9, 2007, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>MSW:</p> <p>Failed to obtain a scrap tire storage site registration for storing more than 500 used/scrap tires on the ground [30 TEX. ADMIN. CODE § 328.60(a)].</p>	<p>Total Assessed: \$5,250</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$5,250</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>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days, obtain a scrap tire registration or reduce the number of tires being stored on the ground at the site to 500 or less. 2. Within 45 days, submit written certification to demonstrate compliance with Ordering Provision no. 1.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 25, 2007

DATES	Assigned	10-Apr-2007	Screening	24-May-2007	EPA Due	
	PCW	31-Aug-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Rodolfo Ruiz
Reg. Ent. Ref. No.	RN104747639
Facility/Site Region	15-Harlingen
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	33640	No. of Violations	1
Docket No.	2007-0866-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Colin Barth
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section	
TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1 <input type="text" value="\$5,000"/>

ADJUSTMENTS (+/-) TO SUBTOTAL 1	
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>	
Compliance History	5% Enhancement Subtotals 2, 3, & 7 <input type="text" value="\$250"/>

Notes: The respondent has received one NOV for same or similar violations at this site within the past five years.

Culpability	No	0% Enhancement	Subtotal 4 <input type="text" value="\$0"/>
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5 <input type="text" value="\$0"/>
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>
N/A	X	(mark with x)

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

Total EB Amounts	\$246	0% Enhancement*	Subtotal 6 <input type="text" value="\$0"/>
Approx. Cost of Compliance	\$5,000	<small>*Capped at the Total EB \$ Amount</small>	

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

Final Penalty Amount	<input type="text" value="\$5,250"/>
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty <input type="text" value="\$5,250"/>
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DEFERRAL	0% Reduction	Adjustment <input type="text" value="\$0"/>
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Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	<input type="text" value="\$5,250"/>
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Screening Date 24-May-2007

Docket No. 2007-0866-MSW-E

PCW

Respondent Rodolfo Ruiz

Policy Revision 2 (September 2002)

Case ID No. 33640

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN104747639

Media [Statute] Municipal Solid Waste

Enf. Coordinator Colin Barth

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 has received one NOV for same or similar violations at this site within the past five years.

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

Screening Date 24-May-2007	Docket No. 2007-0866-MSW-E	PCW
Respondent Rodolfo Ruiz	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 33640	<i>PCW Revision May 25, 2007</i>	
Reg. Ent. Reference No. RN104747639		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Colin Barth		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code § 328.60(a)	
Violation Description	Failed to obtain a scrap tire storage site registration for storing more than 500 used/scrap tires on the ground, as documented during an investigation conducted on February 15, 2007. Specifically, at the time of the investigation approximately 895 tires were observed on the ground at the site.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="0%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>
Matrix Notes	100% of the rule requirement was not met.				

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Two quarterly events are recommended from the February 15, 2007 investigation date to the May 24, 2007 screening date.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$246"/>	Violation Final Penalty Total <input type="text" value="\$5,250"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$5,250"/>	

Economic Benefit Worksheet

Respondent Rodolfo Ruiz
Case ID No. 33640
Reg. Ent. Reference No. RN104747639
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	Overtime 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)	\$5,000	15-Feb-2007	9-Feb-2008	1.0	\$246	n/a	\$246

Notes for DELAYED costs

Estimated cost to register as a scrap tire storage site from investigation date to the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$246

Compliance History

Customer/Respondent/Owner-Operator:	CN602905663 RUIZ, RODOLFO	Classification: AVERAGE	Rating: 7.00
Regulated Entity:	RN104747639 RUIZ PROPERTY	Classification: AVERAGE	Site Rating: 7.00
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER		455150157
Location:	31875 FM 3069, LOS FRESNOS, TX, 78566	Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 15 - HARLINGEN		
Date Compliance History Prepared:	May 21, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 21, 2002 to May 21, 2007		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Colin Barth</u>	Phone:	<u>512 239 0086</u>

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)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court 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 04/05/2007 (5F5898)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | |
|--------------|---|--------------------------|
| Date: | 12/14/2005 | (434152) |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 330, SubChapter A 330.13 | |
| Description: | Failure to obtain a permit, registration, notification, or other authorization for the disposal of solid waste by an individual when the disposal occurs on land the individual does not own. | |
| Self Report? | NO | Classification: Minor |
| Citation: | 30 TAC Chapter 111, SubChapter B 111.209(1) | |
| Description: | Outdoor burning shall be authorized for domestic waste burned at a property designed for and used exclusively as a private residence, when collection of domestic waste is not provided/authorized by the local governmental entity having jurisdiction, and when the waste is generated only from that property. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 328, SubChapter F 328.60(a) | |
| Description: | Failure to obtain a scrap tire storage site registration when more than 500 used/scrap tires are on the ground or 2 000 used/scrap tires are in enclosed and lockable containers. | |
- 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
RODOLFO RUIZ,
RN104747639

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2007-0866-MSW-E

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

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

FINDINGS OF FACT

1. Mr. Ruiz operates an unauthorized tire storage/disposal site located at 31875 Farm-to-Market Road 3069, Los Fresnos, Cameron 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.
3. During an inspection on February 15, 2007, a TCEQ Harlingen Regional Office investigator documented that Mr. Ruiz failed to obtain a scrap tire storage site registration for storing more than 500 used/scrap tires on the ground. Specifically, at the time of the investigation, approximately 895 tires were observed on the ground at the Site.
4. Mr. Ruiz received notice of the violation on or about April 11, 2007.
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 Rodolfo Ruiz" (the "EDPRP") in the TCEQ Chief Clerk's office on October 1, 2007.

6. By letter dated October 1, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Ruiz with notice of the EDPRP. According to the return receipt "green card," Mr. Ruiz received notice of the EDPRP on October 9, 2007, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Ruiz received notice of the EDPRP, provided by the Executive Director. Mr. Ruiz failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Ruiz is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Ruiz failed to obtain a scrap tire storage site registration for storing more than 500 used/scrap tires on the ground, in violation of 30 TEX. ADMIN. CODE § 328.60(a).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Ruiz with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Ruiz 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 Mr. Ruiz and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Ruiz 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.
6. An administrative penalty in the amount of five thousand two hundred fifty dollars (\$5,250.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Ruiz is assessed an administrative penalty in the amount of five thousand two hundred fifty dollars (\$5,250.00) for violations of the rules of the TCEQ. The payment of this administrative penalty and Mr. Ruiz'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: Rodolfo Ruiz; Docket No. 2007-0866-MSW-E" to:

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

2. Mr. Ruiz shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Default Order, obtain a scrap tire registration or reduce the number of tires being stored at the Site to 500 or less, in accordance with 30 TEX. ADMIN. CODE § 328.60(a); and
 - b. Within 45 days after the effective date of this Default 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 No. 2.a.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

and

David A. Ramirez, Waste Section Manager
Texas Commission on Environmental Quality
Harlingen Regional Office
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Ruiz. Mr. Ruiz 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 Mr. Ruiz fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Ruiz's failure to comply is not a violation of this Order. Mr. Ruiz shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Ruiz shall notify the Executive Director within seven days after Mr. Ruiz becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Ruiz shall be made in writing to the Executive Director. Extensions are not effective until Mr. Ruiz receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Ruiz if the Executive Director determines that Mr. Ruiz 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BENJAMIN O. THOMPSON

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Benjamin O. Thompson. 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 Rodolfo Ruiz” (the “EDPRP”) with the Office of the Chief Clerk on October 1, 2007.

I sent the EDPRP to Mr. Ruiz at his last known address on October 1, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Ruiz received notice of the EDPRP on October 9, 2007, as evidenced by the signature on the card.

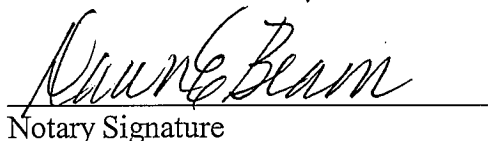
More than 20 days have elapsed since Mr. Ruiz received notice of the EDPRP. Mr. Ruiz failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.



Benjamin O. Thompson
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Benjamin O. Thompson, 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 9th day of September, A.D., 2008.



Notary Signature

Notary Stamp

