

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1370-MLM-E TCEQ ID: RN104947387 CASE NO.: 36421
RESPONDENT NAME: RUSSELL GILES DBA WACO WRECKING

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 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

SITE WHERE VIOLATION(S) OCCURRED: 14597 North Interstate 35, Elm Mott, McLennan County

TYPE OF OPERATION: Automotive wrecking and storage yard

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: One complaint has been received. The complaint alleged unauthorized outdoor burning. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: One complaint was received, but the complainant has not expressed a desire to protest this enforcement action or speak at agenda. No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on June 22, 2009. No comments were received.

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. J. Craig Fleming, Air Enforcement Section, MC 219, (512) 239-5806
TCEQ Regional Contact: Mr. Frank Burlison, Waco Regional Office, MC R-9, (254) 761-3001
Respondent: Ms. Russell Giles, Owner, Waco Wrecking, 1915 Franklin Avenue, Waco, Texas 76701
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: April 10, 2008</p> <p>Date of Investigation Relating to this Case: April 10, 2008, June 4, 2008, and July 28, 2008</p> <p>Date of NOE Relating to this Case: August 18, 2008</p> <p>Background Facts: The EDPRP was filed on January 27, 2009, 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 January 28, 2009, as evidenced by the signature on the card. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent has not submitted documentation indicating compliance with the technical requirements.</p> <p>MLM: Failed to prevent the unauthorized burning of municipal solid waste [30 TEX. ADMIN. CODE §§ 111.201 and 330.15(c), and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$1,757</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: \$1,757</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s):</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease all unauthorized burning. 2. Within 30 days, remove all remains of the burn piles, electric wire, automobile seats, plastic, rubber, metal items, and other debris from the Site and dispose of the waste at an authorized facility 3. Within 45 days, submit written certification to demonstrate compliance with these Ordering Provisions.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	18-Aug-2008	Screening	21-Aug-2008	EPA Due	
	PCW	13-Jan-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Russell Giles dba Waco Wrecking
Reg. Ent. Ref. No.	RN104947387
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36421	No. of Violations	1
Docket No.	2008-1370-MLM-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media	Municipal Solid Waste	Enf. Coordinator	J. Craig Fleming
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

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

Compliance History	10.0% Enhancement	Subtotals 2, 3, & 7	\$100
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Notes	An enhancement of the administrative penalty is recommended for having two NOV's for similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$671	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,170	

SUM OF SUBTOTALS 1-7	Final-Subtotal	\$1,100
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OTHER FACTORS AS JUSTICE MAY REQUIRE	59.7%	Adjustment	\$657
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Adjustment needed to capture avoided cost.
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Final Penalty Amount	\$1,757
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,757
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DEFERRAL	0.0% Reduction	Adjustment	\$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.
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PAYABLE PENALTY	\$1,757
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Screening Date 21-Aug-2008

Docket No. 2008-1370-MLM-E

PCW

Respondent Russell Giles dba Waco Wrecking

Policy Revision 2 (September 2002)

Case ID No. 36421

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN104947387

Media [Statute] Air

Enf. Coordinator J. Craig Fleming

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)	2	10%
	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) 10%

>> 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

An enhancement of the administrative penalty is recommended for having two NOVs for similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 21-Aug-2008		Docket No. 2008-1370-MLM-E		PCW
Respondent Russell Giles dba Waco Wrecking		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 36421		<i>PCW Revision June 12, 2008</i>		
Reg. Ent. Reference No. RN104947387				
Media [Statute] Air				
Enf. Coordinator J. Craig Fleming				
Violation Number	<input type="text" value="1"/>			
Rule Cite(s)	30 Tex. Admin. Code §§ 111.201 and 330.15(c), and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to prevent the unauthorized outdoor burning of municipal solid waste ("MSW"). Specifically, approximately six cubic yards of MSW material including trash, electrical wire insulation, automobile seats, plastic, rubber, and metal items were disposed of at the site by burning on April 10, 2008.			
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 checked="" type="checkbox"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="10%"/>
>> Programmatic Matrix				
Falsification				
Major Moderate Minor				
<input type="text"/> <input type="text"/> <input type="text"/>				
				Percent <input type="text" value="0%"/>
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.			
Adjustment				<input type="text" value="\$9,000"/>
				<input type="text" value="\$1,000"/>
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	Number of violation days	
		<input type="text" value="1"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="checkbox"/>		
				Violation Base Penalty
				<input type="text" value="\$1,000"/>
One single event is recommended.				
Good Faith Efforts to Comply				
		<input type="text" value="0.0%"/>	Reduction	
		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)		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal				<input type="text" value="\$1,000"/>
Economic Benefit (EB) for this violation				
Statutory Limit Test				
Estimated EB Amount		<input type="text" value="\$671"/>	Violation Final Penalty Total	
			<input type="text" value="\$1,757"/>	
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$1,757"/>

Economic Benefit Worksheet

Respondent Russell Giles dba Waco Wrecking
Case ID No. 36421
Reg. Ent. Reference No. RN104947387
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

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	\$557	28-Jul-2008	1-Feb-2009	0.52	\$14	n/a	\$14
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated delayed cost to properly dispose of approximately three cubic yards of burned materials at a permitted municipal solid waste landfill at \$27.28 per ton. Additionally, the cost includes \$500 for the use of equipment and personnel to load and haul the waste to a permitted solid waste landfill. The Date Required is the date of the investigation. The Final Date is the expected date of compliance.

Avoided Costs

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

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]	\$613	28-Jul-2008	1-Feb-2009	1.43	\$44	\$613	\$657
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to properly dispose of approximately six cubic yards of materials at a permitted municipal solid waste landfill at \$27.28 per ton. Additionally, the cost includes \$500 for the use of equipment and personnel to load and haul the waste to a permitted solid waste landfill. The Date Required is the date of the investigation. The Final Date is the expected date of compliance.

Approx. Cost of Compliance

\$1,170

TOTAL

\$671

Compliance History

Customer/Respondent/Owner-Operator: CN602678955 RUSSELL GILES Classification: AVERAGE Rating: 2.34
Regulated Entity: RN104947387 RUSSELL GILES WACO Classification: AVERAGE Site Rating: 3.01
WRECKING BY DEFAULT
ID Number(s):
Location: 14597 N IH 35, ELM MOTT, TX, 76640 Rating Date: September 01 07 Repeat Violator:
NO
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: August 18, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 18, 2003 to August 18, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: J. Craig Fleming Phone: (512) 239-5806

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? N/A
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 07/02/2008 (682201)
 - 2 08/15/2008 (687916)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	04/15/2008	(646203)	
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 111, SubChapter B 111.201 5C THSC Chapter 382 382.085(b)		
Description:	Failure to comply with the general prohibition on outdoor burning within the State of Texas as required by 30 TAC §111.201, by not meeting an exception as provided in 30 TAC §111.205 - 111.215.		
Date:	06/06/2008	(682201)	
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 111, SubChapter B 111.201 5C THSC Chapter 382 382.085(b)		
Description:	Failure to comply with the general prohibition on outdoor burning within the State of Texas as required by 30 TAC §111.201, by not meeting an exception as provided in 30 TAC §111.205 - 111.215.		
- 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
RUSSELL GILES DBA WACO
WRECKING,
RN104947387**

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§
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§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-1370-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 and 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 Russell Giles dba Waco Wrecking ("Russell Giles").

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

FINDINGS OF FACT

1. Russell Giles owns and operates an automotive wrecking and storage yard located at 14597 North Interstate 35 in Elm Mott, McLennan County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12) and involves the management or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on April 10, 2008, and follow up investigations conducted on June 4, 2008 and July 28, 2008, a TCEQ Waco Regional Office investigator documented that Russell Giles failed to prevent the unauthorized burning of municipal solid waste. Specifically, approximately six cubic yards of municipal solid waste including trash, electrical wire insulation, automobile seats, plastic, rubber, and metal items were disposed at the site by burning on April 10, 2008
4. Russell Giles received notice of the violation on or about August 23, 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 Russell Giles dba Waco Wrecking" (the "EDPRP") in the TCEQ Chief Clerk's office on January 27, 2009.
6. By letter dated January 27, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Russell Giles with notice of the EDPRP. According to the return receipt "green card," Russell Giles received notice of the EDPRP on January 28, 2009, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Russell Giles received notice of the EDPRP, provided by the Executive Director. Russell Giles failed to file an answer, 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, Russell Giles is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE chs. 361 and 382 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Russell Giles failing to prevent the unauthorized burning of municipal solid waste, in violation of 30 TEX. ADMIN. CODE §§ 111.201 and 330.15(c), and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Russell Giles 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, Russell Giles failed to file a timely answer 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 Russell Giles 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 Russell Giles for violations of the Texas Water 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 one thousand seven hundred fifty-seven dollars (\$1,757.00) 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. Russell Giles is assessed an administrative penalty in the amount of one thousand seven hundred fifty-seven dollars (\$1,757.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Russell Giles'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: Russell Giles dba Waco Wrecking; Docket No. 2008-1370-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. Russell Giles shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, cease all unauthorized burning;
 - b. Within 30 days after the effective date of this Order, remove all remains of the burn piles, electric wire, automobile seats, plastic, rubber, metal items, and other debris from the Site and dispose of the waste at an authorized facility; and

- c. Within 45 days after the effective date of this 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. and 2.b. 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 fines 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:

Air Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Russell Giles. Russell Giles 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 Russell Giles 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, Russell Giles's failure to comply is not a violation of this Order. Russell Giles shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Russell Giles shall notify the Executive Director within seven days

after Russell Giles 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 Russell Giles shall be made in writing to the Executive Director. Extensions are not effective until Russell Giles 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 Russell Giles if the Executive Director determines that Russell Giles 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.

Russell Giles dba Waco Wrecking
Docket No. 2008-1370-MLM-E
Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BENJAMIN O. THOMPSON

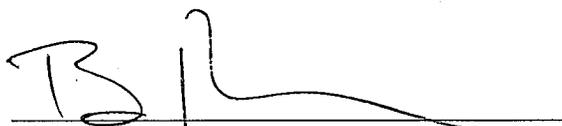
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“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, 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 Russell Giles dba Waco Wrecking” (the “EDPRP”) was filed with the Office of the Chief Clerk on January 27, 2009.

I sent the EDPRP to Russell Giles at her last known address on January 27, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Russell Giles received notice of the EDPRP on January 28, 2009, as evidenced by the signature on the card.

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

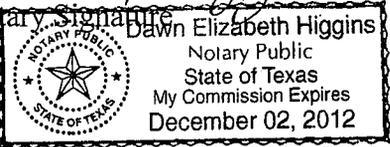


Benjamin O. Thompson
Attorney
Texas Commission on Environmental Quality

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 24th day of April, A.D., 2009.

Notary Stamp


Notary Signature
Dawn Elizabeth Higgins
Notary Public
State of Texas
My Commission Expires
December 02, 2012

NOTARY WITHOUT BOND