

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

Page 1 of 2

**DOCKET NO.:** 2009-0342-IHW-E **TCEQ ID:** RN100676683 **CASE NO.:** 37278**RESPONDENT NAME:** Oglebay Norton Industrial Sands, Inc.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Oglebay Norton Industrial Sands Voca Operations, 363 Farm-to-Market Road 3293, Voca, McCulloch County</p> <p><b>TYPE OF OPERATION:</b> Sand mining facility</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on September 14, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732  <b>TCEQ Enforcement Coordinator:</b> Mr. Michael Meyer, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-4492;  Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. James Coleman, EHS Manager, Oglebay Norton Industrial Sands, Inc., P.O. Box 429, Brady, Texas 76825  Mr. Jerry Janik, Area Operations Manager, Oglebay Norton Industrial Sands, Inc., P.O. Box 429, Brady, Texas 76825  <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>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> December 2, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> January 5, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to prevent the unauthorized discharge of industrial solid waste. Specifically, the investigator documented oil stained soil in the equipment parking area, equipment fuel station and former Dustnet trailer parking area. Analysis of soil samples collected from the equipment parking and fuel station areas indicated elevated total petroleum hydrocarbon levels [30 TEX. ADMIN. CODE § 335.4].</p> <p>2) Failure to properly classify all industrial wastes generated at the Facility. Specifically, samples collected during the investigation indicated that the fuel island containment sludges, wash pad sludges, waste absorbents, waste grease bags, and used oil filters should be classified as Class 1 waste, not Class 2 waste [30 TEX. ADMIN. CODE §§ 335.503 and 335.513].</p> <p>3) Failure to use the appropriate hazardous waste manifest. Specifically, 15 non-hazardous waste manifests were used for the shipment of Class 1 waste. A hazardous waste manifest is to be used for the shipment of Class 1 waste [30 TEX. ADMIN. CODE § 335.10(c)].</p>	<p><b>Total Assessed:</b> \$11,425</p> <p><b>Total Deferred:</b> \$2,285  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$4,570</p> <p><b>Total Paid to General Revenue:</b> \$4,570</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>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent submitted documentation to the TCEQ San Angelo Regional Office on February 1, 2009 indicating that all waste streams had been properly classified and waste manifests corrected.</p> <p><b>Ordering Provisions:</b></p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Within 60 days after the effective date of this Agreed Order, collect representative soil or other appropriate media samples to evaluate the impact of the release and prepare an environmental site assessment to determine whether the release is subject to the Texas Risk Reduction Program ("TRRP") rules. The environmental site assessment, including remediation plans or justification for no further action, as applicable, shall be submitted for review and approval. If the release is subject to TRRP, comply with all applicable requirements of the TRRP which may include: plans, reports, and notices under Subchapter E, financial assurance, and Institutional Controls under Subchapter F and respond completely and adequately, as determined by the TCEQ, to all letter requests for information within 30 days after the date of such letters, or by any other deadline specified in writing; and</p> <p>b. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a</p>

Attachment A  
Docket Number: 2009-0342-IHW-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** Oglebay Norton Industrial Sands, Inc.  
**Payable Penalty Amount:** Nine Thousand One Hundred Forty Dollars (\$9,140)  
**SEP Amount:** Four Thousand Five Hundred Seventy Dollars (\$4,570)  
**Type of SEP:** Pre-approved  
**Third-Party Recipient:** Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")-Abandoned Tire Clean-Up  
**Location of SEP:** McCulloch County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to clean-up sites where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.



C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.  
1716 Briarcrest Drive, Suite 510  
Bryan, Texas 77802-2700

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.



**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.





Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

<b>DATES</b>	<b>Assigned</b>	12-Jan-2009	<b>Screening</b>	11-Mar-2009	<b>EPA Due</b>	
	<b>PCW</b>	11-Mar-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Oglebay Norton Industrial Sands, Inc.
<b>Reg. Ent. Ref. No.</b>	RN100676683
<b>Facility/Site Region</b>	San Angelo
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	37278	<b>No. of Violations</b>	3
<b>Docket No.</b>	2009-0342-IHW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Industrial Hazardous Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Michael Meyer
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$11,500
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$575
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<b>Notes</b>	There was one NOV for same or similar violations during the previous five years.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$650
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$834	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$20,450	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$11,425
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$11,425
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$11,425
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$2,285
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral offered for expedited settlement.
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<b>PAYABLE PENALTY</b>	\$9,140
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<b>Screening Date</b> 11-Mar-2009	<b>Docket No.</b> 2009-0342-IHW-E	<b>PCW</b>
<b>Respondent</b> Oglebay Norton Industrial Sands, Inc.		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 37278		<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b> RN100676683		
<b>Media [Statute]</b> Industrial Hazardous Waste		
<b>Enf. Coordinator</b> Michael Meyer		

### Compliance History Worksheet

**>> Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	1	5%
	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)** 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**

There was one NOV for same or similar violations during the previous five years.

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

<b>Screening Date</b> 11-Mar-2009	<b>Docket No.</b> 2009-0342-IHW-E	<b>PCW</b>	
<b>Respondent</b> Oglebay Norton Industrial Sands, Inc.		<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 37278		<i>PCW Revision October 30, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN100676683			
<b>Media [Statute]</b> Industrial Hazardous Waste			
<b>Enf. Coordinator</b> Michael Meyer			
<b>Violation Number</b> <input type="text" value="1"/>			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 335.4		
<b>Violation Description</b>	Failed to prevent the unauthorized discharge of industrial solid waste, as documented during an investigation conducted on December 2, 2008. Specifically, the investigator documented oil stained soil in the equipment parking area, equipment fuel station and former Dustnet trailer parking area. Analysis of soil samples collected from the equipment parking and fuel station areas indicated elevated total petroleum hydrocarbon levels.		
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
OR	<b>Release</b>	<b>Harm</b>	
		Major      Moderate      Minor	
	Actual	<input type="text" value="x"/>	
	Potential	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>
<b>&gt;&gt; Programmatic Matrix</b>			
	Falsification	Major	Moderate
	<input type="text"/>	<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 levels that are protective of human health or environmental receptors.		
	<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"/>	<b>Number of violation days</b>
		<input type="text" value="99"/>	
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$5,000"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input checked="" type="text" value="x"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
	Two quarterly events are recommended from the December 2, 2008 investigation date to the March 11, 2009 screening date.		
<b>Good Faith Efforts to Comply</b>			
	<input type="text" value="0.0%"/>	<b>Reduction</b>	<input type="text" value="\$0"/>
	Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	<input checked="" type="text" value="x"/>	(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="\$830"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$5,250"/>
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	<input type="text" value="\$5,250"/>

## Economic Benefit Worksheet

**Respondent:** Oglebay Norton Industrial Sands, Inc.

**Case ID No.:** 37278

**Reg. Ent. Reference No.:** RN100676683

**Media:** Industrial Hazardous 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
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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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$20,000	2-Dec-2008	1-Oct-2009	0.83	\$830	n/a	\$830

Notes for DELAYED costs

Estimated cost to conduct an environmental site assessment to determine the extent of contamination and level of response action necessary. The Date Required is the December 2, 2008 investigation and the Final Date is the projected compliance date.

### 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$20,000

TOTAL

\$830

<b>Screening Date</b> 11-Mar-2009		<b>Docket No.</b> 2009-0342-IHW-E		<b>PCW</b>
<b>Respondent</b> Oglebay Norton Industrial Sands, Inc.		<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 37278		<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN100676683				
<b>Media [Statute]</b> Industrial Hazardous Waste				
<b>Enf. Coordinator</b> Michael Meyer				
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 335.503 and 335.513			
<b>Violation Description</b>	Failed to properly classify all industrial wastes generated at the Facility, as documented during an investigation conducted on December 2, 2008. Specifically, samples collected during the investigation indicated that the fuel island containment sludges, wash pad sludges, waste absorbents, waste grease bags, and used oil filters should be classified as Class 1 waste, not Class 2 waste.			
<b>Base Penalty</b>				\$10,000
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			
	Major	Moderate	Minor	
<b>Release</b>				
Actual				
Potential		x		
				<b>Percent</b> 10%
<b>&gt;&gt; Programmatic Matrix</b>				
	Major	Moderate	Minor	
<b>Falsification</b>				
				<b>Percent</b> 0%
<b>Matrix Notes</b>	Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.			
<b>Adjustment</b>				\$9,000
				\$1,000
<b>Violation Events</b>				
<b>Number of Violation Events</b>		5	<b>Number of violation days</b>	
		61		
<i>mark only one with an x</i>	daily			
	weekly			
	monthly			
	quarterly	x		
	semiannual			
	annual			
	single event			
				<b>Violation Base Penalty</b> \$5,000
Five quarterly events (one event for each of the five waste streams) from the December 2, 2008 investigation to the date compliance documentation was received on February 1, 2009.				
<b>Good Faith Efforts to Comply</b>		10.0% Reduction		\$500
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary				
Ordinary			x	
N/A			(mark with x)	
<b>Notes</b>	The TCEQ received compliance documentation from the Respondent on February 1, 2009.			
<b>Violation Subtotal</b>				\$4,500
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		\$2	<b>Violation Final Penalty Total</b> \$4,750	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				\$4,750

## Economic Benefit Worksheet

**Respondent:** Oglebay Norton Industrial Sands, Inc.  
**Case ID No.:** 37278  
**Reg. Ent. Reference No.:** RN100676683  
**Media:** Industrial Hazardous Waste  
**Violation No.:** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$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)	\$250	2-Dec-2008	1-Feb-2009	0.17	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost to properly classify the following waste streams: fuel island containment sludges, wash pad sludges, waste absorbents, waste grease bags, and used oil filters. The Date Required is the December 2, 2008 investigation and the Final Date is the 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

**TOTAL**

\$2

<b>Screening Date</b> 11-Mar-2009	<b>Docket No.</b> 2009-0342-IHW-E	<b>PCW</b>
<b>Respondent</b> Oglebay Norton Industrial Sands, Inc.	<small>Policy Revision 2 (September 2002)</small>	
<b>Case ID No.</b> 37278	<small>PCW Revision October 30, 2008</small>	
<b>Reg. Ent. Reference No.</b> RN100676683		
<b>Media [Statute]</b> Industrial Hazardous Waste		
<b>Enf. Coordinator</b> Michael Meyer		
<b>Violation Number</b> 3		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 335.10(c)	
<b>Violation Description</b>	Failed to use the appropriate hazardous waste manifest, as documented during an investigation conducted on December 2, 2008. Specifically, 15 non-hazardous waste manifests were used for the shipment of Class 1 waste. A hazardous waste manifest is to be used for the shipment of Class 1 waste.	
<b>Base Penalty</b>		\$10,000

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

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	Major	Moderate	Minor	
	<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input style="width:50px;" type="text" value="0%"/>

**>> Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	
					<b>Percent</b> <input style="width:50px;" type="text" value="1%"/>

**Matrix Notes** Although the improper form was used for these manifests, more than 70% of the information provided on the manifests was accurate.

**Adjustment**

**Violation Events**

**Number of Violation Events**   **Number of violation days**

<small>mark only one with an x</small>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text" value="x"/>	

**Violation Base Penalty**

Fifteen single events (one for each manifest).

**Good Faith Efforts to Comply**  **Reduction**

	<b>Before NOV</b>	<b>NOV to EDRP/Settlement Offer</b>
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text" value="x"/>
N/A	<small>(mark with x)</small>	

**Notes** The TCEQ received compliance documentation from the Respondent on February 1, 2009.

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Oglebay Norton Industrial Sands, Inc.  
**Case ID No.** 37278  
**Reg. Ent. Reference No.** RN100676683  
**Media** Industrial Hazardous Waste  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$200	2-Dec-2008	1-Feb-2009	0.17	\$2	n/a	\$2
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

Estimated cost to fill out a uniform hazardous waste manifest for 15 shipments of Class 1 waste. The Date Required is the date of the investigation and the Final Date is the date of compliance.

### 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				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

\$200

**TOTAL**

\$2

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601565542 Oglebay Norton Industrial Sands, Classification: AVERAGE Rating: 10.25  
Regulated Entity: RN100676683 OGLEBAY NORTON INDUSTRIAL SANDS VOCA OPERATIONS Classification: AVERAGE Site Rating:17.50

ID Number(s):  
AIR NEW SOURCE PERMITS ACCOUNT NUMBER MA0008R  
AIR NEW SOURCE PERMITS PERMIT 5039  
AIR NEW SOURCE PERMITS AFS NUM 4830700005  
AIR NEW SOURCE PERMITS PERMIT 73971  
AIR NEW SOURCE PERMITS AFS NUM 4830700009  
STORMWATER PERMIT TXR05Q557  
INDUSTRIAL AND HAZARDOUS WASTE SOLID WASTE REGISTRATION # 73107  
GENERATION (SWR)  
INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXD981593189  
GENERATION  
ON SITE SEWAGE FACILITY PERMIT 1540090  
Location: 363 FM 3293, VOCA, TX, 76887

TCEQ Region: REGION 08 - SAN ANGELO  
Date Compliance History Prepared: August 07, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: February 28, 2004 to February 28, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Michael Meyer Phone: 239 - 4492

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? Oglebay Norton Industrial Sands, Inc.
4. If Yes, who was/were the prior owner(s)/operator(s) ? Texas Mining, LP
5. When did the change(s) in owner or operator occur? 09/14/2006
6. Rating Date: 09/01/2008 Repeat Violator: NO

## 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.)  
N/A  
1 03/16/2004 (265930)  
2 06/26/2008 (683514)  
3 10/08/2008 (704901)  
4 01/05/2009 (721928)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 06/26/2008 (683514) CN601565542  
Self NO Classification: Major

Citation:	30 TAC Chapter 335, SubChapter A 335.5(a)	
Description:	Failure to deed record the onsite landfill prior to disposal of industrial solid waste.	
Self Report?	NO	Classification: Major
Citation:	2D TWC Chapter 26, SubChapter A 26.266(a) 30 TAC Chapter 335, SubChapter A 335.4	
Description:	Failure to remediate releases to the environment.	
Self Report?	NO	Classification: Major
Citation:	30 TAC Chapter 335, SubChapter C 335.62	
Description:	Failure to conduct hazardous waste determinations.	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 335, SubChapter R 335.503(a) 30 TAC Chapter 335, SubChapter R 335.503(a)(4) 30 TAC Chapter 335, SubChapter R 335.503(a)(4)(A) 30 TAC Chapter 335, SubChapter R 335.503(a)(4)(B) 30 TAC Chapter 335, SubChapter R 335.503(a)(4)(C) 30 TAC Chapter 335, SubChapter R 335.503(a)(4)(D) 30 TAC Chapter 335, SubChapter R 335.513	
Description:	Failure to conduct waste classifications.	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 335, SubChapter A 335.6(c)	
Description:	Failure to update the Notice of Registration (NOR).	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 335, SubChapter A 335.9(a)(2)	
Description:	Failure to submit a correct Annual Waste Summary for calendar year 2007 which was due January 25, 2008.	
Self Report?	NO	Classification: Major
Citation:	30 TAC Chapter 335, SubChapter Q 335.474 30 TAC Chapter 335, SubChapter Q 335.479	
Description:	Failure to provide a Source Reduction Waste Minimization Plan.	
Self Report?	NO	Classification: Major
Citation:	30 TAC Chapter 335, SubChapter A 335.10(c) 40 CFR Chapter 262, SubChapter I, PT 262, SubPT B 262.20(a)(1)	
Description:	Failure to properly complete manifests.	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 324, SubChapter A 324.1 40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)(1)	
Description:	Failure to label used oil 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  
OGLEBAY NORTON INDUSTRIAL  
SANDS, INC.  
RN100676683

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-0342-IHW-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Oglebay Norton Industrial Sands, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a sand mining facility at 363 Farm-to-Market Road 3293 in Voca, McCulloch County, Texas (the "Facility").
2. The Facility involves or involved the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 10, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eleven Thousand Four Hundred Twenty-Five Dollars (\$11,425) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Five Hundred Seventy Dollars

(\$4,570) of the administrative penalty and Two Thousand Two Hundred Eighty-Five Dollars (\$2,285) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Four Thousand Five Hundred Seventy Dollars (\$4,570) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project. ("SEP").

7. Any notice and procedures, which otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent submitted documentation to the TCEQ San Angelo Regional Office on February 1, 2009 indicating that all waste streams had been properly classified and waste manifests corrected.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to prevent the unauthorized discharge of industrial solid waste, in violation of 30 TEX. ADMIN. CODE § 335.4, as documented during an investigation conducted on December 2, 2008. Specifically, the investigator documented oil stained soil in the equipment parking area, equipment fuel station and former Dustnet trailer parking area. Analysis of soil samples collected from the equipment parking and fuel station areas indicated elevated total petroleum hydrocarbon levels.
2. Failed to properly classify all industrial wastes generated at the Facility, in violation of 30 TEX. ADMIN. CODE §§ 335.503 and 335.513, as documented during an investigation conducted on December 2, 2008. Specifically, samples collected during the investigation indicated that the fuel island containment sludges, wash pad sludges, waste absorbents, waste grease bags, and used oil filters should be classified as Class 1 waste, not Class 2 waste.

3. Failed to use the appropriate hazardous waste manifest, in violation of 30 TEX. ADMIN. CODE § 335.10(c), as documented during an investigation conducted on December 2, 2008. Specifically, 15 non-hazardous waste manifests were used for the shipment of Class 1 waste. A hazardous waste manifest is to be used for the shipment of Class 1 waste.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Oglebay Norton Industrial Sands, Inc., Docket No. 2009-0342-IHW-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.. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I , Paragraph 6 above, Four Thousand Five Hundred Seventy Dollars (\$4,570) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 60 days after the effective date of this Agreed Order, collect representative soil or other appropriate media samples to evaluate the impact of the release and prepare an environmental site assessment to determine whether the release is subject to the Texas Risk Reduction Program ("TRRP") rules in 30 TEX. ADMIN. CODE ch. 350. The environmental site assessment shall be conducted in accordance with TCEQ guidance document "Determining Which Releases are Subject to TRRP" revised October 21, 2003. The environmental site assessment, including remediation plans or justification for no further action, as applicable, shall be submitted for review and approval to:

Environmental Cleanup Section  
Remediation Division, MC-137 or 221  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

If the release is subject to TRRP, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(I)); and Institutional Controls under Subchapter F and respond completely and adequately, as determined by the TCEQ, to all letter requests for information within 30 days after the date of such letters, or by any other deadline specified in writing; and

- b. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of 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:

Manager, Waste Section  
San Angelo Regional Office  
Texas Commission on Environmental Quality  
622 South Oakes, Suite K  
San Angelo, Texas 76903-7013

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Szolien  
\_\_\_\_\_  
For the Executive Director

8/21/2009  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Jerry Janik  
\_\_\_\_\_  
Signature

July 9, 2009  
\_\_\_\_\_  
Date

JERRY JANIK  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Oglebay Norton Industrial Sands, Inc.

AREA OPERATIONS MANAGER  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>Oglebay Norton Industrial Sands, Inc.</b>
<b>Payable Penalty Amount:</b>	<b>Nine Thousand One Hundred Forty Dollars (\$9,140)</b>
<b>SEP Amount:</b>	<b>Four Thousand Five Hundred Seventy Dollars (\$4,570)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. ("RC&amp;D")-Abandoned Tire Clean-Up</b>
<b>Location of SEP:</b>	<b>McCulloch County</b>

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to clean-up sites where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.  
1716 Briarcrest Drive, Suite 510  
Bryan, Texas 77802-2700

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

