

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2010-0323-MSW-E RN105868822 CASE NO. 39233**  
**RESPONDENT NAMES: VICENTE LOPEZ AND SULEMA LOPEZ**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 1331 Quail Spring Drive, Clint, El Paso County</p> <p><b>TYPE OF OPERATION:</b> Unauthorized scrap tire disposal site</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</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 Respondents expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired December 6, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorneys:</b> Gary K. Shiu, Litigation Division, MC R12, (713) 422-8916  Lena Roberts, Litigation Division, MC 175, (512) 239-3400  <b>TCEQ Enforcement Coordinator:</b> Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577  <b>TCEQ Regional Contact:</b> Kent Waggoner, El Paso Regional Office, MC R-6, (915) 834-4957  <b>Respondents:</b> Vicente Lopez and Sulema Lopez, 1331 Quail Spring Drive, Clint, Texas 79928  <b>Respondents' Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint:</b> N/A</p> <p><b>Date of Investigation:</b> January 14, 2010</p> <p><b>Date of NOE:</b> February 11, 2010</p> <p><b>Background Facts:</b> The EDPRP was filed on August 5, 2010, and mailed to each Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green cards," Respondents each received notice of the EDPRP on August 17, 2010. Respondents failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> Respondents have not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>MSW:</b> Failed to prevent the unauthorized disposal of municipal solid waste (2,200 scrap tires) [30 Tex. ADMIN. CODE § 330.15(c)].</p>	<p><b>Total Assessed:</b> \$2,500</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$2,500</p> <p>This is a Default Order. Respondents have not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Compliance History Classifications:</b>  <i>CN/Person</i> – Average (both respondents)  <i>Site/RN</i> - Average</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provision(s):</b></p> <p>Respondents shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately cease accepting and disposing additional scrap tires at the Site.</li> <li>2. Within 30 days, remove all scrap tires from the Site and dispose of them at an authorized facility.</li> <li>3. Within 45 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	22-Feb-2010	<b>Screening</b>	24-Feb-2010	<b>EPA Due</b>	
	<b>PCW</b>	22-Jun-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Vicente Lopez and Sulema Lopez
<b>Reg. Ent. Ref. No.</b>	RN105868822
<b>Facility/Site Region</b>	6-El Paso
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>				
<b>Enf./Case ID No.</b>	39233	<b>No. of Violations</b>	1	
<b>Docket No.</b>	2010-0323-MSW-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Waste Tires	<b>Government/Non-Profit</b>	No	
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Rajesh Acharya	
		<b>EC's Team</b>	Enforcement Team 6	
<b>Admin. Penalty \$ Limit</b>	<b>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>	\$2,500
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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>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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<b>Notes</b>	No adjustments due to compliance history.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondents do not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$169	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$4,065	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,500
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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>	\$2,500
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,500
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$2,500
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**Screening Date** 24-Feb-2010

**Docket No.** 2010-0323-MSW-E

**PCW**

**Respondent** Vicente Lopez and Sulema Lopez

Policy Revision 2 (September 2002)

**Case ID No.** 39233

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN105868822

**Media [Statute]** Waste Tires

**Enf. Coordinator** Rajesh Acharya

### 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)	0	0%
	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)** 0%

**>> Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

N/A

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes**

No adjustments due to compliance history.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

<b>Screening Date</b> 24-Feb-2010	<b>Docket No.</b> 2010-0323-MSW-E	<b>PCW</b>		
<b>Respondent</b> Vicente Lopez and Sulema Lopez		<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 39233		<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN105868822				
<b>Media [Statute]</b> Waste Tires				
<b>Enf. Coordinator</b> Rajesh Acharya				
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 330.15(c)			
<b>Violation Description</b>	Failed to prevent unauthorized disposal of municipal solid waste, as documented during an investigation conducted on January 14, 2010. Specifically, approximately 2,200 scrap tires (220 cubic yards) were disposed of at the Site.			
	<b>Base Penalty</b>	\$10,000		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	x
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	25%	
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	0%	
<b>Matrix Notes</b>	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.			
	<b>Adjustment</b>	\$7,500		
				\$2,500
<b>Violation Events</b>				
	Number of Violation Events	1	41	Number of violation days
	daily	<input type="text"/>	<input type="text"/>	
	weekly	<input type="text"/>	<input type="text"/>	
	monthly	<input type="text"/>	<input type="text"/>	
<i>mark only one with an x</i>	quarterly	x	<input type="text"/>	
	semiannual	<input type="text"/>	<input type="text"/>	
	annual	<input type="text"/>	<input type="text"/>	
	single event	<input type="text"/>	<input type="text"/>	
			<b>Violation Base Penalty</b>	\$2,500
	One quarterly event is recommended based on the January 14, 2010 investigation date to the February 24, 2010 screening date.			
<b>Good Faith Efforts to Comply</b>				
	<b>0.0%</b> Reduction	\$0		
		Before NOV	NOV to EDPRP/Settlement	
	Extraordinary	<input type="text"/>	<input type="text"/>	
	Ordinary	<input type="text"/>	<input type="text"/>	
	N/A	x	(mark with x)	
<b>Notes</b>	The Respondents do not meet the good faith criteria for this violation.			
		<b>Violation Subtotal</b>	\$2,500	
<b>Economic Benefit (EB) for this violation</b>				
	<b>Estimated EB Amount</b>	\$169		
		<b>Violation Final Penalty Total</b>	\$2,500	
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$2,500	

## Economic Benefit Worksheet

**Respondent** Vicente Lopez and Sulema Lopez  
**Case ID No.** 39233  
**Reg. Ent. Reference No.** RN105868822  
**Media** Waste Tires  
**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				0.00	\$0	n/a	\$0
Permit Costs	\$4,065	14-Jan-2010	14-Nov-2010	0.83	\$169	n/a	\$169
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of approximately 2,200 tires to an authorized facility. Date Required is the investigation date. Final Date is the estimated 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

\$4,065

**TOTAL**

\$169

## Compliance History Report

Customer/Respondent/Owner-Operator:	CN603616509	Vicente Lopez	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN105868822	1331 QUAIL SPRING DR USED SCRAP TIRE STORAGE SITE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):				
Location:	1331 QUAIL SPRING DR, EL PASO, TX, 79928			
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	March 07, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 07, 2005 to March 07, 2010			

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

Name: Rajesh Acharya Phone: (512) 239-0577

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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?
  - Hector Ortiz (OPR)
  - Vicente Lopez (OWN/OPR)
  - Sulema Lopez (OWN/OPR)
4. If Yes, who was/were the prior owner(s)/operator(s)?
  - Vicente Lopez (OWN)
  - Sulema Lopez (OWN)
5. When did the change(s) in owner or operator occur? 01/14/20007
6. Rating Date: 9/1/2009 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, 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   02/10/2010     (788554)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - 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

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN603635632	Sulema Lopez	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN105868822	1331 QUAIL SPRING DR USED SCRAP TIRE STORAGE SITE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):				
Location:	1331 QUAIL SPRING DR, EL PASO, TX, 79928			
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	March 07, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 07, 2005 to March 07, 2010			

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

Name: Rajesh Acharya Phone: (512) 239-0577

### Site Compliance History Components

- Has the site been in existence and/or operation for the full five year compliance period? No
- Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
- If Yes, who is the current owner/operator?
  - Hector Ortiz (OPR)
  - Vicente Lopez (OWN/OPR)
  - Sulema Lopez (OWN/OPR)
- If Yes, who was/were the prior owner(s)/operator(s)?
  - Vicente Lopez (OWN)
  - Sulema Lopez (OWN)
- When did the change(s) in owner or operator occur? 01/14/2007
- Rating Date: 9/1/2009 Repeat Violator: NO

### Components (Multimedia) for the Site :

- Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- Any criminal convictions of the state of Texas and the federal government.  
N/A
- Chronic excessive emissions events.  
N/A
- The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A 1 02/10/2010 (788554)
- Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
- Environmental audits.  
N/A
- Type of environmental management systems (EMSs).  
N/A
- Voluntary on-site compliance assessment dates.  
N/A
- Participation in a voluntary pollution reduction program.  
N/A
- Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
VICENTE LOPEZ AND  
SULEMA LOPEZ;  
RN105868822**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2010-0323-MSW-E**

At its \_\_\_\_\_ agenda meeting, 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 respondents. The respondents made the subject of this Order are Vicente Lopez ("Mr. Lopez") and Sulema Lopez ("Ms. Lopez")<sup>1</sup> (jointly referred to as "Respondents").

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

### **FINDINGS OF FACT**

1. Ms. Lopez owns and Respondents operate an unauthorized scrap tire disposal site at 1331 Quail Spring Drive, Clint, El Paso County, Texas (the "Site").
2. The Site involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on January 14, 2010, a TCEQ El Paso Regional investigator documented that Respondents failed to prevent the unauthorized disposal of municipal solid waste. Specifically, approximately 2,200 scrap tires (220 cubic yards) were disposed of at the Site.
4. Respondents received notice of the violation on or about February 16, 2010.
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 Vicente Lopez and Sulema Lopez" (the "EDPRP") in the TCEQ Chief Clerk's office on August 5, 2010.

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<sup>1</sup>Formerly Sulema Morales

6. By letter dated August 5, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served each Respondent with notice of the EDPRP. According to the return receipt "green cards," Respondents received notice of the EDPRP on August 17, 2010, as evidenced by the signatures on the cards.
7. More than 20 days have elapsed since Respondents received notice of the EDPRP, provided by the Executive Director. Respondents 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 Findings of Fact Nos. 1 and 2, Respondents are 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, Respondents failed to prevent the unauthorized disposal of municipal solid waste, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondents 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, Respondents 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 Respondents 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 Respondents 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 two thousand five hundred dollars (\$2,500.00) 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. Respondents are assessed an administrative penalty in the amount of two thousand five hundred dollars (\$2,500.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' 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.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Vicente Lopez and Sulema Lopez; Docket No. 2010-0323-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

3. Respondents shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Respondents shall cease accepting and disposing additional scrap tires at the Site;
  - b. Within 30 days after the effective date of this Order, Respondents shall remove all scrap tires from the Site and dispose of them at an authorized facility; and
  - c. Within 45 days after the effective date of this Order, Respondents shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.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 and supporting documentation 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:

Kent Waggoner, Waste Section Manager  
El Paso Regional Office  
Texas Commission on Environmental Quality  
401 East Franklin Avenue, Suite 560  
El Paso, Texas 79901-1206

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
6. If Respondents fail 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, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. 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 Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
9. 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.
10. 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.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF GARY K. SHIU**

STATE OF TEXAS

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COUNTY OF HARRIS

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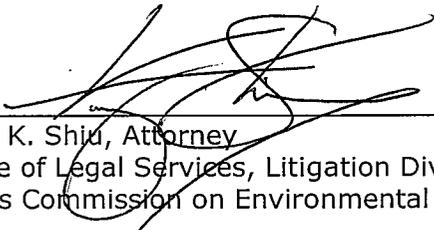
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"My name is Gary K. Shiu. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, 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 Vicente Lopez and Sulema Lopez" (the "EDPRP") was filed with the Office of the Chief Clerk on August 5, 2010.

The EDPRP was mailed to each Respondent at their last known address on August 5, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green cards," Respondents received notice of the EDPRP on August 17, 2010, as evidenced by the signatures on the cards.

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

  
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Gary K. Shiu, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 9 day of November, A.D., 2010.

  
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Notary Signature

