

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1384-MSW-E **TCEQ ID:** RN103000055 **CASE NO.:** 38249

RESPONDENT NAME: Richard Tomlin and Vicki Tomlin

| | | |
|--|---|--|
| ORDER TYPE: | | |
| <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 | |
| CASE TYPE: | | |
| <input type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input 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 checked="" type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |
| <p>SITE WHERE VIOLATION(S) OCCURRED: Shelby Trash Service, 3536 State Highway 7 West, Shelby County</p> <p>TYPE OF OPERATION: Unauthorized disposal site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondents has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on February 1, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Danielle Porras, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-2602; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Richard Tomlin and Ms. Vicki Tomlin, Owners, P.O. Box 1713, Center, Texas 75935 Respondent's Attorney: Mr. George Pigg, Mettauer, Shines, and Adams, Attorneys and Counselors at Law, 112 Cora Street, Center, Texas 75935</p> | | |

| VIOLATION SUMMARY CHART: | | |
|---|--|---|
| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
| <p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 9, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 30, 2009 (NOE)</p> <p>Background Facts: This was a follow-up investigation.</p> <p>WASTE</p> <p>Failure to prevent unauthorized disposal of municipal solid waste ("MSW"). Specifically, the Respondents own property on which MSW has been stored or disposed of without authorization. The MSW includes approximately 134 cubic yards of tires, plastic, household waste, PVC pipe, glass, appliances, a tire rim, burnt metal, styrofoam, wire, and shingles [30 TEX. ADMIN. CODE § 330.15(c)].</p> | <p>Total Assessed: \$1,300</p> <p>Total Deferred: \$260 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,040</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>CN603534108 and CN603534116 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 Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease disposing of any additional waste at the Site;</p> <p>b. Within 30 days after the effective date of this Agreed Order, remove all MSW from the Site and dispose of it at an authorized facility; and</p> <p>c. Within 45 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 Provisions a and b.</p> |

Additional ID No(s): 0



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

| | | | | | | |
|-------|----------|-------------|-----------|------------|---------|--|
| DATES | Assigned | 3-Aug-2009 | Screening | 7-Aug-2009 | EPA Due | |
| | PCW | 15-Sep-2009 | | | | |

RESPONDENT/FACILITY INFORMATION

| | | | |
|----------------------|---------------------------------|--------------------|-------|
| Respondent | Richard Tomlin and Vicki Tomlin | | |
| Reg. Ent. Ref. No. | RN103000055 | | |
| Facility/Site Region | 10-Beaumont | Major/Minor Source | Minor |

CASE INFORMATION

| | | | |
|-------------------|-----------------------|-----------------------|--------------------|
| Enf./Case ID No. | 38249 | No. of Violations | 1 |
| Docket No. | 2009-1384-MSW-E | Order Type | 1660 |
| Media Program(s) | Municipal Solid Waste | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Danielle Porras |
| | | EC's Team | Enforcement Team 7 |
| Admin. Penalty \$ | Limit Minimum \$0 | Maximum | \$10,000 |

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|-------------------|-------------------------------|-------|
| Compliance History | 30.0% Enhancement | Subtotal 2, 3, & 7 | \$300 |
|---------------------------|-------------------|-------------------------------|-------|

Notes: Enhancement for one NOV with same or similar violations and one Default Order.

| | | | | |
|--------------------|----|------------------|-------------------|-----|
| Culpability | No | 0.0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|------------------|-------------------|-----|

Notes: The Respondents do not meet the culpability criteria.

| | | |
|--|-------------------|-----|
| Good Faith Effort to Comply Total Adjustments | Subtotal 5 | \$0 |
|--|-------------------|-----|

| | | | |
|-------------------------|-------------------|-------------------|-----|
| Economic Benefit | 0.0% Enhancement* | Subtotal 6 | \$0 |
|-------------------------|-------------------|-------------------|-----|

| | | |
|----------------------------|---------|-----------------------------------|
| Total EB Amounts | \$125 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$2,880 | |

| | | |
|-----------------------------|-----------------------|---------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$1,300 |
|-----------------------------|-----------------------|---------|

| | | | |
|---|------|-------------------|-----|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 0.0% | Adjustment | \$0 |
|---|------|-------------------|-----|

Reduces or enhances the Final Subtotal by the Indicated percentage.

Notes:

| | |
|-----------------------------|---------|
| Final Penalty Amount | \$1,300 |
|-----------------------------|---------|

| | | |
|-----------------------------------|-------------------------------|---------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$1,300 |
|-----------------------------------|-------------------------------|---------|

| | | | |
|-----------------|-----------------|-------------------|--------|
| DEFERRAL | 20.0% Reduction | Adjustment | -\$260 |
|-----------------|-----------------|-------------------|--------|

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only, e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

| | |
|------------------------|---------|
| PAYABLE PENALTY | \$1,040 |
|------------------------|---------|

Screening Date 7-Aug-2009

Docket No. 2009-1384-MSW-E

PCW

Respondent Richard Tomlin and Vicki Tomlin

Policy Revision 2 (September 2002)

Case ID No. 38249

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103000055

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) | 1 | 5% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 1 | 25% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 30%

>> 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

Enhancement for one NOV with same or similar violations and one Default Order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 7-Aug-2009

Docket No. 2009-1384-MSW-E

PCW

Respondent Richard Tomlin and Vicki Tomlin

Policy Revised 1 (September 2002)

Case ID No. 38249

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103000055

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 330.15(c)

Violation Description

Failed to prevent unauthorized disposal of municipal solid waste ("MSW"). Specifically, the Respondents own property on which MSW has been stored or disposed of without authorization. The MSW includes approximately 134 cubic yards of tires, plastic, household waste, PVC pipe, glass, appliances, a tire rim, burnt metal, styrofoam, wire, and shingles.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|----------------------|----------------------|-------------------------------------|
| | 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

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|----------------------|----------------------|----------------------|----------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |

Percent

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 this violation.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x

| | |
|--------------|-------------------------------------|
| daily | <input type="text"/> |
| weekly | <input type="text"/> |
| monthly | <input type="text"/> |
| quarterly | <input checked="" type="checkbox"/> |
| semiannual | <input type="text"/> |
| annual | <input type="text"/> |
| single event | <input type="text"/> |

Violation Base Penalty

One quarterly event is recommended from the June 9, 2009 investigation to the August 7, 2009 screening date.

Good Faith Efforts to Comply

Reduction

| | 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="checkbox"/> | (mark with x) |

Notes

The Respondents do not meet the good faith criteria for this violation.

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 Richard Tomlin and Vicki Tomlin
Case ID No. 38249
Reg. Ent. Reference No. RN103000055
Media Municipal Solid Waste
Violation No. 1

| | |
|-------------------------|------------------------------|
| Percent Interest | Years of Depreciation |
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| 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 | \$2,880 | 9-Jun-2009 | 22-Apr-2010 | 0.87 | \$125 | n/a | \$125 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to remove the unauthorized waste and dispose of it at a facility authorized to accept the waste.
 The Date Required is the investigation date and the 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

\$2,880

TOTAL

\$125

Compliance History Report

| | | | | |
|---|--|----------------------|-------------------------|--------------------|
| Customer/Respondent/Owner-Operator: | CN603534108 | Richard Tomlin | Classification: Average | Rating: 27.00 |
| Regulated Entity: | RN103000055 | SHELBY TRASH SERVICE | Classification: Average | Site Rating: 27.00 |
| ID Number(s): | MUNICIPAL SOLID WASTE NON | ID NUMBER | | 455100042 |
| Location: | 3536 STATE HIGHWAY 7 W, SHELBY COUNTY | | | |
| TCEQ Region: | REGION 10 - BEAUMONT | | | |
| Date Compliance History Prepared: | September 16, 2009 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | September 16, 2004 to September 16, 2009 | | | |

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

Name: Danielle Porras Phone: (512) 239-2602

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? Richard Tomlin
Vicki Tomlin
4. If Yes, who was/were the prior owner(s)/operator(s) ? Williams, David
5. When did the change(s) in owner or operator occur? 07/30/2007
6. Rating Date: 9/1/2008 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.
 - Effective Date: 02/05/2006 ADMINORDER 2004-0950-MSW-E
 - Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.5(a)
 - Description: Failure to properly dispose of waste.
- 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 08/10/2007 (555619)
 - 2 07/30/2009 (749003)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 08/10/2007 (555619)
 - Self NO Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.5(a)
 - Description: Failure to properly dispose of waste.
 - Self NO Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.15
 - Description: Failure to properly dispose of waste.
- 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: | CN603534116 Vicki Tomlin | Classification: Average | Rating: 27.00 |
| Regulated Entity: | RN103000055 SHELBY TRASH SERVICE | Classification: Average | Site Rating: 27.00 |
| ID Number(s): | MUNICIPAL SOLID WASTE NON | ID NUMBER | 455100042 |
| Location: | 3536 STATE HIGHWAY 7 W, SHELBY COUNTY | | |
| TCEQ Region: | REGION 10 - BEAUMONT | | |
| Date Compliance History Prepared: | September 16, 2009 | | |
| Agency Decision Requiring Compliance History: | Enforcement | | |
| Compliance Period: | September 16, 2004 to September 16, 2009 | | |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History | | | |
| Name: | <u>Danielle Porras</u> | Phone: | <u>(512) 239-2602</u> |

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? Richard Tomlin
Vicki Tomlin
4. If Yes, who was/were the prior owner(s)/operator(s) ? Williams, David
5. When did the change(s) in owner or operator occur? 07/30/2007
6. Rating Date: 9/1/2008 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.
 - Effective Date: 02/05/2006 ADMINORDER 2004-0950-MSW-E
 - Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.5(a)
 - Description: Failure to properly dispose of waste.
- 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 08/10/2007 (555619)
 - 2 07/30/2009 (749003)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 08/10/2007 (555619)
 - Self NO Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.5(a)
 - Description: Failure to properly dispose of waste.
 - Self NO Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.15
 - Description: Failure to properly dispose of waste.
- 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
RICHARD TOMLIN AND VICKI
TOMLIN
RN103000055

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2009-1384-MSW-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 Richard Tomlin and Vicki Tomlin ("the Respondents") 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 Respondents, represented by George Pigg of the law firm of Mettauer, Shines, and Adams, appear before the Commission and together stipulate that:

1. The Respondents own an unauthorized disposal site at 3536 State Highway 7 West in Shelby County, Texas (the "Site").
2. The Site involves or involved the management of municipal solid waste ("MSW"), as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about August 4, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Three Hundred Dollars (\$1,300) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

The Respondents have paid One Thousand Forty Dollars (\$1,040) of the administrative penalty and Two Hundred Sixty Dollars (\$260) is deferred contingent upon the Respondents' 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 Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty.

7. Any notice and procedures, which might 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 Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. 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 Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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 owners of the Site, the Respondents are alleged to have failed to prevent unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c), as documented during an investigation conducted on June 9, 2009. Specifically, the Respondents own property on which MSW has been stored or disposed of without authorization. The MSW includes approximately 134 cubic yards of tires, plastic, household waste, PVC pipe, glass, appliances, a tire rim, burnt metal, styrofoam, wire, and shingles.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents 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: Richard Tomlin and Vicki Tomlin, Docket No. 2009-1384-MSW-E" to:

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

2. The Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. It is further ordered that the Respondents shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease disposing of any additional waste at the Site;
 - b. Within 30 days after the effective date of this Agreed Order, remove all MSW from the Site and dispose of it at an authorized facility; and
 - c. Within 45 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 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 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:

Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If the Respondents fail 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 Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive 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 Respondents 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 Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, 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 Smolin
For the Executive Director

2/8/2010
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.

Richard Tomlin
Signature

11/24/09
Date

RICHARD TOMLIN
Name (Printed or typed)
Authorized Representative of
Richard Tomlin

Owner
Title

Vicki Tomlin
Signature

11/24/09
Date

Vicki Tomlin
Name (Printed or typed)
Authorized Representative of
Vicki Tomlin

Owner
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.

