

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2009-1989-MLM-E **TCEQ ID:** RN105693725 **CASE NO.:** 38814  
**RESPONDENT NAME:** Tyler County

<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 checked="" 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 checked="" type="checkbox"/> USED OIL
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Precinct 2 CR 2565, located on the east side of United States Highway 287 on County Road 2565, Chester, Tyler County</p> <p><b>TYPE OF OPERATION:</b> Maintenance and storage yard</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 May 24, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  TCEQ Attorney/SEP Coordinator: None  TCEQ Enforcement Coordinator: Mr. John Shelton, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-2563; Ms. Laurie Baves, Enforcement Division, MC 219, (512) 239-4495  Respondent: Mr. Rusty Hughes, Commissioner, Tyler County, 300 West Bluff Street, Woodville, Texas 75979  Respondent's Attorney: 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 type="checkbox"/> Routine  <input checked="" 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> August 5, 2009</p> <p><b>Date of NOE Relating to this Case:</b> September 18, 2009</p> <p><b>Background Facts:</b> This was an enforcement follow-up.</p> <p><b>WASTE</b></p> <p>1) Failure to perform cleanup actions upon detection of a release of used oil to the environment. Specifically, multiple areas of oil-stained soil were observed [30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS § 279.22(d)].</p> <p>2) Failure to prevent the unauthorized disposal of MSW. Specifically, approximately 70 cubic yards of waste, including construction and demolition debris and brush, were disposed of at the Site [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p><b>Total Assessed:</b> \$2,315</p> <p><b>Total Deferred:</b> \$463  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$1,852</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input 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 has implemented the following corrective measures at the Site:</p> <p>a. Submitted documentation demonstrating that all MSW has been disposed of at an authorized facility on January 29, 2010; and,</p> <p>b. Submitted documentation verifying that all oil-stained soils have been removed and disposed of at an authorized facility on January 29, 2010.</p>

Additional IDs: OSSF Permit 2290923



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2009

<b>DATES</b>	Assigned	30-Nov-2009			
	PCW	7-Dec-2009	Screening	1-Dec-2009	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Tyler County
Reg. Ent. Ref. No.	RN105693725
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	38814	No. of Violations	1
Docket No.	2009-1989-MLM-E	Order Type	1660
Media Program(s)	Used Oil	Government/Non-Profit	Yes
Multi-Media	Municipal Solid Waste	Enf. Coordinator	John Shelton
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1:

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** 5.0% Enhancement Subtotals 2, 3, & 7:

Notes: Enhancement for one NOV with same or similar violation.

**Culpability** No 0.0% Enhancement Subtotal 4:

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** Subtotal 5:

**Economic Benefit** 0.0% Enhancement Subtotal 6:

Total EB Amounts:  Approx. Cost of Compliance:  \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal:

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0.0% Adjustment:

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount:

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty:

**DEFERRAL** 20.0% Reduction Adjustment:

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**

Screening Date: 1-Dec-2009

Docket No. 2009-1989-MLM-E

PCW

Respondent: Tyler County

Policy Revision 2 (September 2002)

Case ID No. 38814

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN105693725

Media [Statute]: Used Oil

Enf. Coordinator: John Shelton

### Compliance History Worksheet

>> Compliance History: Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History: Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History: Summary

Compliance History Notes

Enhancement for one NOV with same or similar violation.

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

Screening Date 1-Dec-2009

Docket No. 2009-1989-MLM-E

PCW

Respondent Tyler County

Policy Revision 2 (September 2002)

Case ID No. 38814

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105893725

Media [Statute] Used Oil

Enf. Coordinator John Shelton

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 324.6 and 40 Code of Federal Regulations § 279.22(d)

Violation Description

Failed to perform cleanup actions upon detection of a release of used oil to the environment. Specifically, multiple areas of oil-stained soil were observed.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 2

119 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$500

Two quarterly events are recommended from the August 5, 2009 investigation date to the December 1, 2009 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$50

	Before NOV	NOV to EDRP/Settlement Offer
	Extraordinary	
Ordinary		X
N/A		(mark with x)

Notes The Respondent came into compliance on January 29, 2010.

Violation Subtotal \$450

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$12

Violation Final Penalty Total \$475

This violation Final Assessed Penalty (adjusted for limits) \$475

# Economic Benefit Worksheet

**Respondent:** Tyler County  
**Case ID No.:** 38814  
**Reg. Ent. Reference No.:** RN105693725  
**Media:** Used Oil  
**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	\$500	5-Aug-2009	29-Jan-2010	0.48	\$12	n/a	\$12
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly clean up the oil spill areas. Date Required is the investigation date and 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

\$500

**TOTAL**

\$12



# Penalty Calculation Worksheet (PCW)

DATES	Assigned	30-Nov-2009	Screening	1-Dec-2009	EPA Due	
	PCW	7-Dec-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Tyler County
Reg. Ent. Ref. No.	RN105693725
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	38814	No. of Violations	1
Docket No.	2009-1989-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	Yes
Multi-Media	Used Oil	Enf. Coordinator	John Shelton
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** *Subtotal 1*

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement *Subtotals 2, 3, & 7*

Notes

**Culpability**   Enhancement *Subtotal 4*

Notes

**Good Faith Effort to Comply Total Adjustments** *Subtotal 5*

**Economic Benefit**  Enhancement\* *Subtotal 6*

Total EB Amounts  Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** *Final Subtotal*

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

*Final Penalty Amount*

**STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty*

**DEFERRAL**  Reduction Adjustment

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

Notes

**PAYABLE PENALTY**

Screening Date 1-Dec-2009

Docket No. 2009-1989-MLM-E

PCW

Respondent Tyler County

Policy Revision 2 (September 2002)

Case ID No. 38814

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105693725

Media [Statute] Municipal Solid Waste

Enf. Coordinator John Shelton

**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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

>> 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 dissimilar violations.

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

Screening Date: 1-Dec-2009

Docket No. 2009-1989-MLM-E

PCW

Respondent: Tyler County

Policy Revision 2 (September 2002)

Case ID No. 38814

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106693726

Media [Statute]: Municipal Solid Waste

Enf. Coordinator: John Shelton

Violation Number: 1

Rule Cite(s)

30 Tex. Admin. Code § 330.15(c)

Violation Description

Failed to prevent the unauthorized disposal of municipal solid waste. Specifically, approximately 70 cubic yards of waste, including construction and demolition debris and brush, were disposed of at the Site.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent: 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent: 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment: \$9,000

\$1,000

Violation Events

Number of Violation Events: 2

119 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty: \$2,000

Two quarterly events are recommended from the August 5, 2009 investigation date to the December 1, 2009 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$200

Extraordinary

Ordinary

N/A

Notes

Before NOV NOV to EDRP/Settlement Offer

X

(mark with x)

The Respondent came into compliance on January 29, 2010.

Violation Subtotal: \$1,800

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$30

Violation Final Penalty Total: \$1,840

This violation Final Assessed Penalty (adjusted for limits): \$1,840

# Economic Benefit Worksheet

**Respondent:** Tyler County  
**Case ID No.:** 38814  
**Reg. Ent. Reference No.:** RN105693725  
**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
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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	\$1,252	5-Aug-2009	29-Jan-2010	0.48	\$30	n/a	\$30
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly dispose of approximately 70 cubic yards of municipal solid waste at an authorized disposal site. Date Required is the investigation date and 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

\$1,252

**TOTAL**

\$30

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601098056 Tyler County Classification: AVERAGE Rating: 15.34

Regulated Entity: RN105693725 OSSF CR 2565 Classification: Site Rating:

ID Number(s): ON SITE SEWAGE FACILITY PERMIT 2290923

Location: EAST SIDE OF US HWY. 287 ON CR 2565, CHESTER, TX, 75936

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: December 22, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 22, 2004 to December 22, 2009

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

Name: John Shelton Phone: (512) 239-2563

## 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? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6.

## 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.)

1	03/30/2009	(740195)
2	04/23/2009	(741077)
3	09/18/2009	(766436)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/23/2009 (741077)

Self Report?	NO	Classification: Minor
Citation:	40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)	
Description:	Failure to label used oil containers.	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 324, SubChapter A 324.6	
	40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(d)	
Description:	Failure to abate used oil spills.	

- 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  
TYLER COUNTY  
RN105693725

§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-1989-MLM-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 Tyler County ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 371 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 maintenance and storage yard located on the east side of United States Highway 287 on County Road 2565 in Chester, Tyler 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 and involves or involved the management of used oil as defined in TEX. HEALTH & SAFETY CODE ch. 371.
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 September 23, 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 Two Thousand Three Hundred Fifteen Dollars (\$2,315) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Eight Hundred Fifty-Two Dollars

(\$1,852) of the administrative penalty and Four Hundred Sixty-Three Dollars (\$463) 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.

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 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 has implemented the following corrective measures at the Site:
  - a. Submitted documentation demonstrating that all MSW has been disposed of at an authorized facility on January 29, 2010; and
  - b. Submitted documentation verifying that all oil-stained soils have been removed and disposed of at an authorized facility on January 29, 2010.
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 Site, the Respondent is alleged to have:

1. Failed to perform cleanup actions upon detection of a release of used oil to the environment, in violation of 30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS § 279.22(d), as documented during an investigation conducted on August 5, 2009. Specifically, multiple areas of oil-stained soil were observed.
2. Failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c), as documented during an investigation conducted on August 5, 2009. Specifically, approximately 70 cubic yards of waste, including construction and demolition debris and brush, were disposed of at the Site.

### 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: Tyler County, Docket No. 2009-1989-MLM-E" to:

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

2. 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 Site operations referenced in this Agreed Order.
3. 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.
4. 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.
5. 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 Szallies  
For the Executive Director

5/7/2010  
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.

Rusty Hughes  
Signature

3/23/10  
Date

Rusty Hughes  
Name (Printed or typed)  
Authorized Representative of  
Tyler County

Tyler County Commissioner  
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.