

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1661-MSW-E RN102854478 CASE NO. 38523
RESPONDENT NAME: WILL DYLAN INVESTMENTS, INC.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input 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

SITE WHERE VIOLATION(S) OCCURRED: 7771 Kiely Road, Canutillo, El Paso County

TYPE OF OPERATION: Facility involves the management and/or the disposal of municipal solid waste

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired June 21, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Philip Aldridge, Waste Enforcement Section, MC 128, (512) 239-0855

TCEQ Regional Contact: Mr. Kent Waggoner, El Paso Regional Office, MC R-6, (915) 834-4957

Respondent: Mr. Robert Veliz, President, Will Dylan Investments, Inc., 1127 East Rio Grande Avenue, El Paso, Texas 79902;
Mr. Robert Veliz, President, Will Dylan Investments, Inc., 3824 Tompkins Road, El Paso, Texas 79902

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: September 14, 2009</p> <p>Date of NOE Relating to this Case: September 17, 2009</p> <p>Background Facts: The EDPRP was filed on March 18, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on or before April 26, 2010. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>MSW: Failed to prevent the unauthorized disposal of municipal solid waste ("MSW") [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p>Total Assessed: \$1,300</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$1,300</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease disposing of any additional waste at the Facility. 2. Within 30 days, remove all MSW from the Facility and dispose of the waste at an authorized facility. 3. Within 90 days, submit an Affected Property Assessment Report ("APAR") to the Executive Director for approval. The APAR should include an assessment of all property affected by the waste generated from a fire at the Facility, including but not limited to the on-site waste well and on-site property potentially affected. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350. 4. Within 105 days, submit written certification demonstrating compliance with Ordering Provisions Nos. 1 through 3.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	28-Sep-2009	Screening	7-Oct-2009	EPA Due	
	PCW	4-Feb-2010				

RESPONDENT/FACILITY INFORMATION

Respondent	WILL DYLAN INVESTMENTS, INC.				
Reg. Ent. Ref. No.	RN102854478				
Facility/Site Region	6-EI Paso	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	38523	No. of Violations	1
Docket No.	2009-1661-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Philip Aldridge
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000
		EC's Team	Enforcement Team 7

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	30.0% Enhancement	Subtotals 2, 3, & 7	\$300
Notes	Enhancement for one previous NOV with similar violations and one Findings Order.		
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	\$0
Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$345	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$15,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,300
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
	Final Penalty Amount
	\$1,300

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,300
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.		
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PAYABLE PENALTY	\$1,300
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Screening Date 7-Oct-2009

Docket No. 2009-1661-MSW-E

PCW

Respondent WILL DYLAN INVESTMENTS, INC.

Policy Revision 2 (September 2002)

Case ID No. 38523

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102854478

Media [Statute] Municipal Solid Waste

Enf. Coordinator Philip Aldridge

Compliance History Worksheet

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

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

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 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 previous NOV with similar violations and one Findings Order.

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

Screening Date 7-Oct-2009

Docket No. 2009-1661-MSW-E

PCW

Respondent WILL DYLAN INVESTMENTS, INC.

Policy Revision 2 (September 2002)

Case ID No. 38523

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102854478

Media [Statute] Municipal Solid Waste

Enf. Coordinator Philip Aldridge

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 ("MSW"). Specifically, the Respondent failed to remediate contaminated soil and remove approximately five cubic yards of burnt plastic 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 1

23 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended from the September 14, 2009 record review date to the October 7, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$345

Violation Final Penalty Total \$1,300

This violation Final Assessed Penalty (adjusted for limits) \$1,300

Economic Benefit Worksheet

Respondent WILL DYLAN INVESTMENTS, INC.
Case ID No. 38523
Req. Ent. Reference No. RN102854478
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	\$15,000	14-Sep-2009	1-Mar-2010	0.46	\$345	n/a	\$345
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 MSW and complete an Affected Property Assessment Report on the site. The Date Required is the date of the record review 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

\$15,000

TOTAL

\$345

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603575820	WILL DYLAN INVESTMENTS, INC.	Classification: AVERAGE	Rating: 2.50
Regulated Entity:	RN102854478	PLASTICS INTERNATIONAL NORTH	Classification: AVERAGE	Site Rating: 2.50
ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE GENERATION		ID NUMBER	F1512
Location:	7771 KIELY RD, CANUTILLO, TX, 79835			
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	October 29, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 29, 2004 to October 29, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Philip Aldridge	Phone:	512-239-0855	

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?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">OWNOPR</td> <td style="width: 50%; text-align: center;">WILL DYLAN INVESTMENTS, INC.</td> </tr> </table>	OWNOPR	WILL DYLAN INVESTMENTS, INC.				
OWNOPR	WILL DYLAN INVESTMENTS, INC.						
4. If Yes, who was/were the prior owner(s)/operator(s) ?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">OWNOPR</td> <td style="width: 50%; text-align: center;">TAMEZ, JOHN</td> </tr> <tr> <td style="width: 50%; text-align: center;">OWNOPR</td> <td style="width: 50%; text-align: center;">Plastics International, Inc.</td> </tr> </table>	OWNOPR	TAMEZ, JOHN	OWNOPR	Plastics International, Inc.		
OWNOPR	TAMEZ, JOHN						
OWNOPR	Plastics International, Inc.						
5. When did the change(s) in owner or operator occur?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">04/29/2005</td> <td style="width: 33%; text-align: center;">OWNOPR</td> <td style="width: 34%; text-align: center;">Plastics International, Inc.</td> </tr> <tr> <td style="text-align: center;">02/17/2009</td> <td style="text-align: center;">OWNOPR</td> <td style="text-align: center;">TAMEZ, JOHN</td> </tr> </table>	04/29/2005	OWNOPR	Plastics International, Inc.	02/17/2009	OWNOPR	TAMEZ, JOHN
04/29/2005	OWNOPR	Plastics International, Inc.					
02/17/2009	OWNOPR	TAMEZ, JOHN					
6. Rating Date: 9/1/2009 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: 06/19/2008 | ADMINORDER 2005-1274-MSW-E |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 327 327.3(b) | |
| Description: Failure to notify the agency as soon as possible but no later than 24 hours after determination that a reportable discharge or spill has occurred. | |
| Classification: Moderate | |
| Citation: 2D TWC Chapter 26, SubChapter A 26.266(a)
30 TAC Chapter 327 327.5(a) | |
| Description: Failure to immediately abate and contain a spill or discharge and cooperate fully with the executive director and the local incident command system. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 330, SubChapter B 330.22 | |
| Description: Failure to store all solid waste in a manner so as to prevent a fire, safety, or health hazard. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 330, SubChapter A 330.5(a) | |
| Description: Failure to prevent the storage of solid waste in a manner so as to prevent the creation and maintenance of a nuisance and the endangerment of human health and welfare or the environment. | |
- 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 | 05/11/2005 | (377021) |
| 2 | 10/19/2007 | (598281) |
| 3 | 03/26/2009 | (735675) |
| 4 | 09/22/2009 | (776121) |

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

Date: 03/27/2009 (735675)

CN603575820

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)

Description: Failed to prevent the disposal of MSW without the written authorization of the commission.

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
WILL DYLAN INVESTMENTS,
INC.;
RN102854478**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-1661-MSW-E**

At its _____ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, 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 respondent. The respondent made the subject of this Order is Will Dylan Investments, Inc. (“Dylan Investments”).

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

FINDINGS OF FACT

1. Dylan Investments owns property located at 7771 Kiely Road, Canutillo, El Paso County, Texas (the “Facility”).
2. The Facility involves the management and/or the disposal of municipal solid waste (“MSW”) as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During record review conducted on September 14, 2009, a TCEQ El Paso Regional Office investigator documented that Dylan Investments failed to prevent the unauthorized disposal of MSW. Specifically, Dylan Investments failed to remediate contaminated soil and remove approximately five cubic yards of burnt plastic at the Facility.
4. Dylan Investments received notice of the violation on or about September 22, 2009.
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 Will Dylan Investments, Inc.” (the “EDPRP”) in the TCEQ Chief Clerk’s office on March 18, 2010.

6. By letter dated March 18, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Dylan Investments with notice of the EDPRP. According to the return receipt "green card," Dylan Investments received notice of the EDPRP on or before April 26, 2010, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Dylan Investments received notice of the EDPRP, provided by the Executive Director. Dylan Investments 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 Finding of Fact Nos. 1 and 2, Dylan Investments is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Dylan Investments failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Dylan Investments 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, Dylan Investments 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 Dylan Investments 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 Dylan Investments 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 one thousand three hundred dollars (\$1,300.00) 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. Dylan Investments is assessed an administrative penalty in the amount of one thousand three hundred dollars (\$1,300.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Dylan Investments's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Will Dylan Investments, Inc.; Docket No. 2009-1661-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. Dylan Investments shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Dylan Investments shall cease disposing of any additional waste at the Facility.
 - b. Within 30 days after the effective date of this Order, Dylan Investments shall remove all MSW from the Facility and dispose of the waste at an authorized facility.
 - c. Within 90 days after the effective date of this Order, Dylan Investments shall submit an Affected Property Assessment Report ("APAR"), pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. The APAR should include an assessment of all property affected by the waste generated from a fire at the Facility, including but not limited to the on-site waste well and on-site property potentially affected. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and final notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 through 350.96); Financial Assurance (30 TEX. ADMIN. CODE § 350.33(1)); and Institutional Controls under Subchapter F. Dylan Investments shall submit the report to:

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

- d. Within 105 days after the effective date of this Order, Dylan Investments shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. 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 fine and imprisonment for knowing violations.”

Dylan Investments shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. 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 79901-1212

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Dylan Investments. Dylan Investments is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

5. If Dylan Investments fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Dylan Investments's failure to comply is not a violation of this Order. Dylan Investments shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Dylan Investments shall notify the Executive Director within seven days after Dylan Investments becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Dylan Investments shall be made in writing to the Executive Director. Extensions are not effective until Dylan Investments receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Dylan Investments if the Executive Director determines that Dylan Investments has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BARHAM A. RICHARD

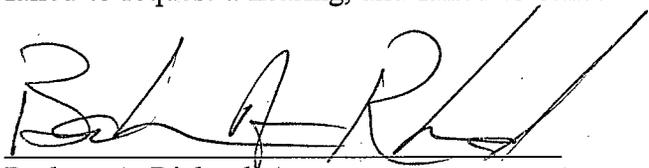
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Barham A. Richard. 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 Will Dylan Investments, Inc.” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 18, 2010.

The EDPRP was mailed to Dylan Investments at its last known address on March 18, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Dylan Investments received notice of the EDPRP on or before April 26, 2010, as evidenced by the signature on the card.

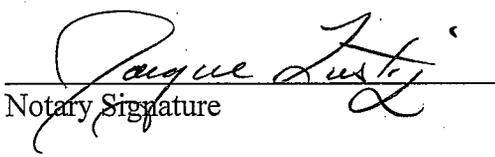
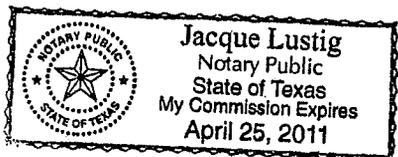
More than 20 days have elapsed since Dylan Investments received notice of the EDPRP. Dylan Investments failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Barham A. Richard, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Barham A. Richard, 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 6th day of May A.D., 2010.



Notary Signature