

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2010-0797-MLM-E RN105819452 CASE NO. 39601

RESPONDENT NAME: RICHARD L. TILLERY

ORDER TYPE:		
<input type="checkbox"/> 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 checked="" type="checkbox"/> AIR	<input checked="" 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 type="checkbox"/> WATER RIGHTS	<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<input type="checkbox"/> USED OIL	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> WATER UTILITY

SITE WHERE VIOLATION(S) OCCURRED: Lot 50, 2315 Fairdale Road, Hemphill, Sabine County

TYPE OF OPERATION: unauthorized disposal site

SMALL BUSINESS: Yes No N/A

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired December 20, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Jeffrey J. Huhn, Litigation Division, MC 175, (512) 239-3400
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577

TCEQ Regional Contact: Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838

Respondent: Richard Tillery, 2315 Fairdale Road, Hemphill, Texas 75948

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: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaint(s): N/A</p> <p>Date(s) of Investigation: March 23, 2010</p> <p>Date(s) of NOE(s): April 13, 2010</p> <p>Background Facts: The EDRP was filed on August 10, 2010, and mailed to Respondent via first class mail and certified mail, return receipt requested. According to the return receipt "green card," Respondent received the EDRP on August 17, 2010. Respondent failed to file an answer and failed to request a hearing.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation demonstrating compliance with the technical requirements.</p> <p>MLM:</p> <ol style="list-style-type: none"> Failed to prevent the unauthorized disposal of municipal solid waste [30 TEX. ADMIN. CODE § 330.15(c)]. Failed to comply with the general prohibition on outdoor burning [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 	<p>Total Assessed: \$7,646</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$7,646</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed administrative penalty but will be required to do so within 30 days under the terms of this Order.</p> <p>Compliance History Classifications: <i>Person/CN</i> – Average <i>Site/RN</i> – Not yet rated</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions: Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately: <ol style="list-style-type: none"> Cease any additional waste disposal at the Site; and Cease all unauthorized burning at the Site. Within 30 days, remove all waste from the Site and dispose of the waste at an authorized facility. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	3-May-2010	Screening	4-May-2010	EPA Due	
	PCW	10-May-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	Richard L. Tillery		
Reg. Ent. Ref. No.	RN105819452		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39601	No. of Violations	2
Docket No.	2010-0797-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Air	Enf. Coordinator	Rajesh Acharya
		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	\$2,000
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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	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment due to compliance history.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$5,789	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$9,446	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	282.3%	Adjustment	\$5,646
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with the violation no. 2.
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Final Penalty Amount	\$7,646
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,646
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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	\$7,646
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Screening Date 4-May-2010

Docket No. 2010-0797-MLM-E

PCW

Respondent Richard L. Tillery

Policy Revision 2 (September 2002)

Case ID No. 39601

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105819452

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rajesh Acharya

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment due to compliance history.

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

Screening Date	4-May-2010	Docket No.	2010-0797-MLM-E	PCW
Respondent	Richard L. Tillery	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	39601	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN105819452			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Rajesh Acharya			
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, approximately 500 cubic yards of MSW including construction and demolition debris, scrap tire steel belts, aluminium metal, insulation, and vegetative materials were disposed of at the Site.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual			x
	Potential			
				Percent 10%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%
Matrix Notes	Human health and the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.				
					Adjustment \$9,000

Violation Events

Number of Violation Events	1	42	Number of violation days
<i>mark only one with an x</i>	daily		
	weekly		
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		
			Violation Base Penalty \$1,000
One quarterly event is recommended from the March 23, 2010 investigation date to the May 4, 2010 screening date.			

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement
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	\$143	Violation Final Penalty Total	\$3,823
		This violation Final Assessed Penalty (adjusted for limits)	\$3,823

Economic Benefit Worksheet

Respondent Richard L. Tillery
Case ID No. 39601
Reg. Ent. Reference No. RN105819452
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	\$3,800	23-Mar-2010	23-Dec-2010	0.75	\$143	n/a	\$143
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 and properly dispose of approximately 500 cubic yards of MSW at an authorized facility. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$3,800

TOTAL

\$143

Screening Date 4-May-2010 **Docket No.** 2010-0797-MLM-E **PCW**
Respondent Richard L. Tillery *Policy Revision 2 (September 2002)*
Case ID No. 39601 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105819452
Media [Statute] Municipal Solid Waste
Enf. Coordinator Rajesh Acharya

Violation Number
Rule Cite(s)
Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text" value="10%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	<input type="text" value="Human health and the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors."/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

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 type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

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

Notes

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 L. Tillery
Case ID No. 39601
Reg. Ent. Reference No. RN105819452
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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]	\$5,646	22-Mar-2010	23-Mar-2010	0.00	\$0	\$5,646	\$5,646
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to dispose of approximately 833 cubic yards of MSW at an authorized facility instead of burning. Date Required is the day prior to the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance \$5,646

TOTAL \$5,646

Compliance History Report

Customer/Respondent/Owner-Operator: CN601767262 TILLERY, RICHARD L Classification: AVERAGE Rating: 6.00
Regulated Entity: RN105819452 RICHARD TILLERY LOT 50 Classification: Site Rating:
ID Number(s):
Location: Lot 50, East of Kenna Wood, in Hemphill, Sabine County
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: May 10, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: May 10, 2005 to May 10, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Rajesh Acharya Phone: (512) 239-0577

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? 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

Components (Multimedia) for the Site:

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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF
AN ENFORCEMENT ACTION
AGAINST
RICHARD L. TILLERY;
RN105819452**

**§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-0797-MLM-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 chs. 361 and 382, 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 Richard L. Tillery ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates an unauthorized disposal site located at Lot 50, 2315 Fairdale Road in Hemphill, Sabine County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12), and involves the management and/or disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on March 23, 2010, a TCEQ Beaumont Regional Office investigator documented that Respondent:
 - a. Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 500 cubic yards of MSW including construction and demolition debris, scrap tire steel belts, aluminum metal, insulation, and vegetative materials were disposed of at the Site; and
 - b. Failed to comply with the general prohibition on outdoor burning. Specifically, Respondent burned approximately 833 cubic yards of MSW including metal, wood waste, and mattresses.
4. Respondent received notice of the violations on or about April 18, 2010.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Richard L. Tillery" (the "EDPRP") in the TCEQ Chief Clerk's office on August 10, 2010.

6. By letter dated August 10, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on August 17, 2010, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE chs. 361 and 382 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Respondent 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 No. 3.b., Respondent failed to comply with the general prohibition on outdoor burning, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, Respondent 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 Respondent and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent 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.
7. An administrative penalty in the amount of seven thousand six hundred forty-six dollars (\$7,646.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. 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. Respondent is assessed an administrative penalty in the amount of seven thousand six hundred forty-six dollars (\$7,646.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Respondent'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.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Richard L. Tillery; Docket No. 2010-0797-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

3. Respondent shall undertake the following technical requirements:

a. Immediately upon the effective date of this Order, Respondent shall:

- i. Cease any additional waste disposal at the Site; and
- ii. Cease all unauthorized burning at the Site.

b. Within 30 days after the effective date of this Order, Respondent shall remove all MSW from the Site and dispose of the waste at an authorized facility.

c. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703-1830

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

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JEFFREY J. HUHN

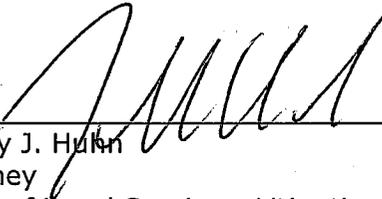
STATE OF TEXAS §
 §
COUNTY OF BEXAR §

"My name is Jeffrey J. Huhn. 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 Richard L. Tillery" (the "EDPRP") was filed with the Office of the Chief Clerk on August 10, 2010.

The EDPRP was mailed to Richard L. Tillery at his last known address on August 10, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Richard L. Tillery received notice of the EDPRP on August 17, 2010, as evidenced by the signature on the card.

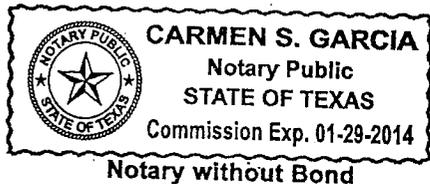
More than 20 days have elapsed since Richard L. Tillery received notice of the EDPRP. Richard L. Tillery failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."

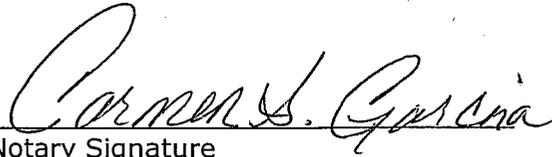


Jeffrey J. Huhn
Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jeffrey J. Huhn 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 3 day of November, A.D., 2010.





Notary Signature