EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1820-MLM-E **TCEQ ID:** RN105906440 **CASE NO.:** 40669

RESPONDENT NAME: Ray Serna and Joe Trejo

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
X AIR	X MULTI-MEDIA (check all that apply)	X INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Serna Burn Site, Ranch Road 2, ½ mile east of U.S. Highway 385 and ¼ mile south of County Road 310 near Littlefield, Lamb County

TYPE OF OPERATION: Storage lot used for unauthorized burning

SMALL BUSINESS: ___ Yes X 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 Respondents has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on April 11, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Andrea Park, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-4575; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
Respondent: Mr. Ray Serna, Operator, 1124 East 16th Street, Littlefield, Texas 79339
Mr. Joe Trejo, Co-Owner, 1124 East 16th Street, Littlefield, Texas 79339
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __ Routine X Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** September 30, 2010 **Date of NOV/NOE Relating to this Case:** October 6, 2010 (NOE) **Background Facts:** This was an enforcement follow-up. **WASTE** 1) Failed to comply with the general prohibition on outdoor burning. Specifically, the Respondents burned approximately 267 cubic yards of scrap tires at the Site [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 2) Failed to prevent the storage or disposal of industrial solid waste at an unauthorized facility. Specifically, the Respondents disposed of approximately 800 cubic yards of scrap tires from an adjacent agricultural operation in a pit at the Site [30 TEX. ADMIN. CODE § 335.4].	**Total Assessed:** $4,992 **Total Deferred:** $998 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $144 (remaining $3,850 due in 35 monthly payments of $110 each) **Compliance History Classifications:** Person/CN - Average Site/RN - Average **Major Source:** __ **Yes** X **No** **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondents to: a. Immediately upon the effective date of this Agreed Order: i. Cease disposing of any additional scrap tires at the Site; and ii. Cease all unauthorized burning of scrap tires at the Site. b. Within 30 days after the effective date of this Agreed Order, remove all scrap tires and scrap tire pieces from the Site and dispose of them at an authorized facility; and c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. through b.

Additional ID No(s).: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	11-Oct-2010				
PCW	2-Nov-2010	Screening	2-Nov-2010	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Ray Serna and Joe Trejo		
Reg. Ent. Ref. No.	RN105906440		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	40669	No. of Violations	2
Docket No.	2010-1820-MLM-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media	Air	Enf. Coordinator	Andrea Park
		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**

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* **$100**

Notes: Enhancement for one NOV with same/similar violations.

Culpability — No — 0.0% Enhancement — *Subtotal 4* **$0**

Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* **$0**

Economic Benefit — 0.0% Enhancement* — *Subtotal 6* **$0**

Total EB Amounts $3,336
Approx. Cost of Compliance $14,477

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$2,100**

OTHER FACTORS AS JUSTICE MAY REQUIRE — 137.7% — *Adjustment* **$2,892**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no.1.

Final Penalty Amount **$4,992**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$4,992**

DEFERRAL — 20.0% Reduction — *Adjustment* **-$998**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$3,994**

Screening Date 2-Nov-2010 **Docket No.** 2010-1820-MLM-E **PCW**

Respondent Ray Serna and Joe Trejo *Policy Revision 2 (September 2002)*

Case ID No. 40669 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN105906440

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Andrea Park

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("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/similar violations.

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

Screening Date	2-Nov-2010	**Docket No.** 2010-1820-MLM-E	**PCW**
Respondent	Ray Serna and Joe Trejo		*Policy Revision 2 (September 2002)*
Case ID No.	40669		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN105906440		
Media [Statute]	Industrial and Hazardous Waste		
Enf. Coordinator	Andrea Park		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to comply with the general prohibition on outdoor burning. Specifically, the Respondents burned approximately 267 cubic yards of scrap tires 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 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 as a result of the violation.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended.

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

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $2,892

Statutory Limit Test

Violation Final Penalty Total $2,496

This violation Final Assessed Penalty (adjusted for limits) $2,496

Economic Benefit Worksheet

Respondent Ray Serna and Joe Trejo
Case ID No. 40669
Reg. Ent. Reference No. RN105906440
Media Industrial and Hazardous 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				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]				0.00	$0	$0	$0
Other (as needed)	$2,696	19-Mar-2010	30-Sep-2010	1.45	$196	$2,696	$2,892

Notes for AVOIDED costs Estimated avoided cost to properly dispose of approximately 267 cubic yards of waste at an authorized facility rather than burning. The date required is the date of outdoor burning and the final date is the investigation date.

Approx. Cost of Compliance $2,696

TOTAL $2,892

Screening Date	2-Nov-2010	**Docket No.** 2010-1820-MLM-E	**PCW**
Respondent	Ray Serna and Joe Trejo		*Policy Revision 2 (September 2002)*
Case ID No.	40669		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN105906440		
Media [Statute]	Industrial and Hazardous Waste		
Enf. Coordinator	Andrea Park		

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 335.4

Violation Description Failed to prevent the storage or disposal of industrial solid waste at an unauthorized facility. Specifically, the Respondents disposed of approximately 800 cubic yards of scrap tires from an adjacent agricultural operation in a pit 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

33 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended based on documentation of the violation during the September 30, 2010 investigation to the November 2, 2010 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 Respondents do not meet the good faith criteria for this violation.

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $444

Statutory Limit Test

Violation Final Penalty Total $2,496

This violation Final Assessed Penalty (adjusted for limits) $2,496

Economic Benefit Worksheet

Respondent Ray Serna and Joe Trejo
Case ID No. 40669
Reg. Ent. Reference No. RN105906440
Media Industrial and Hazardous Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	$11,781	30-Sep-2010	2-Jul-2011	0.75	$444	n/a	$444
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to dispose of approximately 800 cubic yards of waste at an authorized facility. The date required is the investigation date and the final date is the expected 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 $11,781

TOTAL $444

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603655705	Serna, Ray	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN105906440	Serna Burn Site	Classification: AVERAGE	Site Rating: 2.00
ID Number(s):				
Location:	RR 2, ½ MILE EAST OF U.S. HIGHWAY 385 AND ¼ MILE SOUTH OF COUNTY ROAD 310 LITTLEFIELD, TX, 79339			
TCEQ Region:	REGION 02 - LUBBOCK			
Date Compliance History Prepared:	November 03, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 03, 2005 to November 03, 2010			

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

Name: Andrea Park Phone: (512) 239-4575

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. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 04/14/2010 (798678)
2 07/23/2010 (842642)
3 10/03/2010 (866015)

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

Date: 04/16/2010 (798678)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THSC Chapter 382 382.085(b)
Description: Failure to prevent the outdoor burning of industrial solid waste.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.2(d)
30 TAC Chapter 335, SubChapter A 335.2(e)
30 TAC Chapter 335, SubChapter A 335.2(f)
30 TAC Chapter 335, SubChapter A 335.2(h)
Description: Failure to notify the TCEQ that storage, processing, or disposal activities of industrial solid waste are planned at least 90 days prior to engaging in such activities.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

Compliance History

Customer/Respondent/Owner-Operator:	CN603777368	Trejo, Joe	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN105906440	Serna Burn Site	Classification: AVERAGE	Site Rating: 2.00
ID Number(s):				
Location:	RR 2, ½ MILE EAST OF U.S. HIGHWAY 385 AND ¼ MILE SOUTH OF COUNTY ROAD 310, LITTLEFIELD, TX, 7933			
TCEQ Region:	REGION 02 - LUBBOCK			
Date Compliance History Prepared:	November 23, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 23, 2005 to November 23, 2010			

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

Name: Andrea Park Phone: (512) 239 - 4575

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 04/14/2010 (798678)
2 07/23/2010 (842642)
3 10/03/2010 (866015)

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

Date: 04/16/2010 (798678)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THSC Chapter 382 382.085(b)
Description: Failure to prevent the outdoor burning of industrial solid waste.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.2(d)
30 TAC Chapter 335, SubChapter A 335.2(e)
30 TAC Chapter 335, SubChapter A 335.2(f)
30 TAC Chapter 335, SubChapter A 335.2(h)
Description: Failure to notify the TCEQ that storage, processing, or disposal activities of industrial solid waste are planned at least 90 days prior to engaging in such activities.

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	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	**TEXAS COMMISSION ON**
RAY SERNA AND JOE TREJO	**§**	
RN105906440	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-1820-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 Ray Serna and Joe Trejo ("the Respondents") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. Ray Serna owns and Joe Trejo operates a storage lot used for unauthorized burning on Ranch Road 2, ½ mile east of U.S. Highway 385 and ¼ mile south of County Road 310 near Littlefield, Lamb County, Texas (the "Site").

2. The Site involves or involved the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.

4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about October 11, 2010.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Four Thousand Nine Hundred Ninety-Two Dollars ($4,992) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid One Hundred Forty-Four Dollars ($144) of the administrative penalty and Nine Hundred Ninety-Eight Dollars ($998) is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondents to pay all or part of the deferred penalty.

   The remaining amount of Three Thousand Eight Hundred Fifty Dollars ($3,850) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Ten Dollars ($110) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondents fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondents to meet the payment schedule of this Agreed Order constitutes the failure by the Respondents to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents have not complied with one or more of the terms or conditions in this Agreed Order.

10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondents are alleged to have:

1. 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), as documented

during a record review conducted on September 30, 2010. Specifically, the Respondents burned approximately 267 cubic yards of scrap tires at the Site.

2. Failed to prevent the storage or disposal of industrial solid waste at an unauthorized facility, in violation of 30 TEX. ADMIN. CODE § 335.4, as documented during a record review conducted on September 30, 2010. Specifically, the Respondents disposed of approximately 800 cubic yards of scrap tires from an adjacent agricultural operation in a pit at the Site.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Ray Serna and Joe Trejo, Docket No. 2010-1820-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 Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.

3. It is further ordered that the Respondents shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Agreed Order:

      i. Cease disposing of any additional scrap tires at the Site; and

      ii. Cease all unauthorized burning of scrap tires at the Site.

   b. Within 30 days after the effective date of this Agreed Order, remove all scrap tires and scrap tire pieces from the Site and dispose of them at an authorized facility; and

c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a. through 3.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section, Manager
Lubbock Regional Office
Texas Commission on Environmental Quality
5012 50th Street, Suite 100
Lubbock, Texas 79414-3421

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.

5. If the Respondents fail to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director.

The determination of what constitutes good cause rests solely with the Executive Director.

7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 4/1/2011
For the Executive Director 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.

_____ _____
Signature Date

_____ _____
Name (Printed or typed) Title
Authorized Representative of
Ray Serna

_____ _____
Signature Date

_____ _____
Name (Printed or typed) Title
Authorized Representative of
Joe Trejo

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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ _____
For the Executive Director Date 4/1/2011

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- 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.

_____ _____
Signature Date 2-1-11

_____ _____
Name (Printed or typed) Title
Authorized Representative of
Ray Serna

_____ _____
Signature Date

_____ _____
Name (Printed or typed) Title
Authorized Representative of
Joe Trejo

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.