

I. 35 SANDPIT, INC.
RN102869484
Docket No. 2013-0670-MLM-E

Order Type:

Default Order (SOAH evidentiary hearing)

Media:

MLM – IHW and AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

4372 South Interstate 35 West, Alvarado, Johnson County

Type of Operation:

sand mining and recycling operation

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date:	November 7, 2014
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Comments Received:	None
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Penalty Information

Total Penalty Assessed:	\$12,496
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Total Paid to General Revenue:	\$0
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Total Due to General Revenue:	\$12,496
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Compliance History Classifications:

Person/CN – Unsatisfactory
Site/RN – Unsatisfactory

Major Source:	No
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Statutory Limit Adjustment:	None
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Applicable Penalty Policy:	September 2011
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Investigation Information

Complaint Date(s):	December 19, 2012
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Complaint Information: Alleged insulation, reflective barrier boards, and Certainteed boards were being hauled to the facility for grinding, that windblown insulation and trash were scattered over the area, and that dark brown water was leaching from the piles and flowing towards the North Fork of Chambers Creek and into an on-site containment basin.

Date(s) of Investigation:	December 27, 2012
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Date(s) of NOV(s):	N/A
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Date(s) of NOE(s):	March 4, 2013
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I. 35 SANDPIT, INC.
RN102869484
Docket No. 2013-0670-MLM-E

Violation Information

1. Failed to submit a written notice to the TCEQ which includes the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity 90 days prior to engaging in such activities [30 TEX. ADMIN. CODE § 335.6(h)].
2. Failed to provide a written cost estimate for closure of the Site [30 TEX. ADMIN. CODE § 335.24(j)].
3. Failed to establish and maintain financial assurance for closure of the Site [30 TEX. ADMIN. CODE §§ 37.921 and 335.24(k)].
4. Failed to obtain authorization to construct and operate sources of air emissions [TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), and 30 TEX. ADMIN. CODE § 116.110(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately:
 - i. Cease the construction and/or operation of sources of air emissions at the Site until such time as a permit or authorization is obtained; and
 - ii. Submit form PI-7 to register for a Permit by Rule ("PBR") to obtain authorization for the grinder.
2. Within 30 days:
 - i. Provide notification which includes an accurate description of recycling activities;
 - ii. Provide a written cost estimate for closure of the Site; and
 - iii. Submit documentation to demonstrate acceptable financial assurance for closure of the Site.
3. Within 60 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: October 8, 2013; July 10, 2014
Date Green Card(s) Signed: November 1, 2013; July 12, 2014
Date Answer(s) Filed: October 31, 2013
SOAH Referral Date: December 18, 2014
Hearing Date(s):
Preliminary hearing: February 20, 2014 (waived)
Evidentiary hearing: July 25, 2014 (defaulted)

Contact Information

TCEQ Attorneys: Jim Sallans, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Michael Pace, Enforcement Division, (817) 588-5933
TCEQ Regional Contact: Sam Barrett, Dallas/Fort Worth Regional Office, (817)-588-5800
Respondent Contact: Finis L. Shipman, President, I. 35 SANDPIT, INC., 3525 Southwestern, Dallas, Texas 75225
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	4-Mar-2013	Screening	5-Mar-2013	EPA Due	
	PCW	19-Jun-2013				

RESPONDENT/FACILITY INFORMATION	
Respondent	I. 35 SANDPIT, INC.
Reg. Ent. Ref. No.	RN102869484
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	46379	No. of Violations	4
Docket No.	2013-0670-MLM-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media	Air	Enf. Coordinator	Mike Pace
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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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	\$2,250

Notes: Enhancement for one order with a denial of liability and unsatisfactory performer classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$2,842	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$5,115		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$9,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	28.2%	Adjustment	\$2,746
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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 violation no. 3.

Final Penalty Amount	\$12,496
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$12,496
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$12,496
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Screening Date 5-Mar-2013

Docket No. 2013-0670-MLM-E

PCW

Respondent I. 35 SANDPIT, INC.

Policy Revision 3 (September 2011)

Case ID No. 46379

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102869484

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

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 (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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 (<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%
<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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for one order with a denial of liability and unsatisfactory performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date 5-Mar-2013
Respondent I. 35 SANDPIT, INC.
Case ID No. 46379
Reg. Ent. Reference No. RN102869484
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Mike Pace

Docket No. 2013-0670-MLM-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Violation Number

Rule Cite(s)

Violation Description Failed to submit a written notice to the TCEQ which includes the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity 90 days prior to engaging in such activities.

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5.0%"/>

Matrix Notes

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"/>	(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 I. 35 SANDPIT, INC.
Case ID No. 46379
Reg. Ent. Reference No. RN102869484
Media Violation No. 1 Industrial and Hazardous Waste

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	\$500	27-Dec-2012	5-Oct-2013	0.77	\$19	n/a	\$19
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to submit a notice of intent. The date required is the investigation date, and 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	\$500	TOTAL	\$19
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Screening Date 5-Mar-2013
Respondent I. 35 SANDPIT, INC.
Case ID No. 46379
Reg. Ent. Reference No. RN102869484
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Mike Pace

Docket No. 2013-0670-MLM-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5.0%"/>

Matrix Notes

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"/>	(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 I. 35 SANDPIT, INC.
Case ID No. 46379
Reg. Ent. Reference No. RN102869484
Media Violation No. Industrial and Hazardous Waste
 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Economic benefit is covered under violation no. 1.

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 \$0

TOTAL \$0

Screening Date 5-Mar-2013
Respondent I. 35 SANDPIT, INC.
Case ID No. 46379
Reg. Ent. Reference No. RN102869484
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Mike Pace

Docket No. 2013-0670-MLM-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code §§ 37.921 and 335.24(k)

Violation Description

Failed to establish and maintain financial assurance for closure of the Site.

Base Penalty \$25,000

>> **Environmental, Property and Human Health Matrix**

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

68 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,746

Violation Final Penalty Total \$2,083

This violation Final Assessed Penalty (adjusted for limits) \$2,083

Economic Benefit Worksheet

Respondent I. 35 SANDPIT, INC.
Case ID No. 46379
Reg. Ent. Reference No. RN102869484
Media Violation No. Industrial and Hazardous Waste
 3

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]	\$2,615	27-Dec-2011	27-Dec-2012	1.00	\$131	\$2,615	\$2,746
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for obtaining financial assurance for 20,694 cubic yards of industrial material stored outdoors. The date required is one year prior to the investigation date, and the final date is the investigation date.

Approx. Cost of Compliance

\$2,615

TOTAL

\$2,746

Screening Date 5-Mar-2013
Respondent I. 35 SANDPIT, INC.
Case ID No. 46379
Reg. Ent. Reference No. RN102869484
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Mike Pace

Docket No. 2013-0670-MLM-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)

Violation Description

Failed to obtain authorization to construct and operate sources of air emissions. Specifically, the Respondent began operating a grinder without proper authorization.

Base Penalty \$25,000

>> **Environmental, Property and Human Health Matrix**

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3 68 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

Three monthly events are recommended from the December 27, 2012 investigation to the March 5, 2013 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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$77

Violation Final Penalty Total \$6,248

This violation Final Assessed Penalty (adjusted for limits) \$6,248

Economic Benefit Worksheet

Respondent I. 35 SANDPIT, INC.
Case ID No. 46379
Reg. Ent. Reference No. RN102869484
Media Violation No. Industrial and Hazardous Waste
 4

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	\$2,000	27-Dec-2012	5-Oct-2013	0.77	\$77	n/a	\$77
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to obtain authorization for the grinder. The date required is the investigation date, and the final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$2,000

TOTAL \$77

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN600343941, RN102869484, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN600343941, I. 35 SANDPIT, INC. **Classification:** UNSATISFACTORY **Rating:** 124.58

Regulated Entity: RN102869484, I-35 Sand Pit **Classification:** UNSATISFACTORY **Rating:** 124.58

Complexity Points: 5 **Repeat Violator:** YES

CH Group: 07 - Solid Waste Landfills

Location: 4372 S INTERSTATE 35 W ALVARADO, TX 76009-6372, JOHNSON COUNTY

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 455040174

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: February 28, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 28, 2008 to February 28, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Mike Pace

Phone: (817) 588-5933

Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

1 Effective Date: 02/13/2012 ADMINORDER 2010-1027-MSW-E (1660 Order-Agreed Order With Denial)

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.7(a)

Description: Failed to obtain a permit or registration as a municipal solid waste (MSW) facility. Specifically, Respondents failed to demonstrate compliance with recycling requirements related to limits on storage and operation, thereby, constituting disposal of approximately 13,500 cubic yards of MSW at the Facility,

Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter A 328.5(b)(2)

30 TAC Chapter 328, SubChapter A 328.5(b)(4)

Rqmt Prov:OP 2.c ORDER

Description: Failed to update the Notice of Intent ("NOI") with any changes to the amounts of material accumulated at the Facility for recycling. Specifically, the Facility exceeded the proposed maximum storage limits specified in the NOI for wood materials (10,000 cubic yards). There were 13,500 cubic yards of wood present at the Facility on the date of the investigation.

Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter A 328.5(f)(1)

30 TAC Chapter 328, SubChapter A 328.5(f)(2)

30 TAC Chapter 328, SubChapter A 328.5(g)

Description: Failed to maintain recycling records and make them immediately available for inspection upon request by agency personnel. Specifically, Respondents failed to make any recycling records available for review by agency personnel.

Classification: Minor

Citation: 2A TWC Chapter 5, SubChapter A 5.702

30 TAC Chapter 334, SubChapter B 334.22(a)

Description: Failed to pay outstanding UST fees and associated late fees for Financial Administration Account No. 20033537 for fiscal year 2010.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1 December 02, 2011 (958641)

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
I. 35 SANDPIT, INC.;
RN102869484**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-0670-MLM-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's First Amended 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 I. 35 SANDPIT, INC. ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a sand mining and recycling operation located at 4372 South Interstate 35 West in Alvarado, Johnson County, Texas (the "Site"). The Site involves the management and/or the disposal of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361, and consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on December 27, 2012, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent:
 - a. Failed to submit a written notice to the TCEQ which includes the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity 90 days prior to engaging in such activities;
 - b. Failed to provide a written cost estimate for closure of the Site;
 - c. Failed to establish and maintain financial assurance for closure of the Site; and
 - d. Failed to obtain authorization to construct and operate sources of air emissions. Specifically, Respondent began operating a grinder at the Site without proper authorization.
3. 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 I. 35 SANDPIT, INC." (the "EDPRP") in the TCEQ Chief Clerk's office on October 8, 2013.
4. Respondent filed an answer requesting a hearing on October 31, 2013, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on December 18, 2013.
5. The Executive Director filed the "Executive Director's First Amended 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 I. 35 SANDPIT, INC.” (the “EDFARP”) in the TCEQ Chief Clerk’s office on July 10, 2014.

6. By letter dated July 10, 2014, sent to Respondent’s last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDFARP. According to the USPS.com “Track & Confirm” delivery confirmation records, Respondent received notice of the EDFARP on July 12, 2014.
7. On April 3, 2014, the Administrative Law Judge (“ALJ”) issued Order No. 2, which set the evidentiary hearing for July 25, 2014. The SOAH docket clerk mailed a copy of Order No. 2 to Respondent at its last known address via first class mail, postage pre-paid.
8. On July 25, 2014, the Administrative Law Judge (“ALJ”) convened the evidentiary hearing. Respondent failed to appear, and the Executive Director requested that the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.
9. On August 6, 2014, the ALJ entered a finding that Respondent was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No. 4, Dismissing Case and Remanding to the Executive Director so that TCEQ may dispose of this case on a default basis.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE chs. 361 and 382 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to submit a written notice to the TCEQ which includes the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity 90 days prior to engaging in such activities, in violation of 30 TEX. ADMIN. CODE § 335.6(h).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide a written cost estimate for closure of the Site, in violation of 30 TEX. ADMIN. CODE § 335.24(j).
4. As evidenced by Finding of Fact No. 2.c, Respondent failed to establish and maintain financial assurance for closure of the Site, in violation of 30 TEX. ADMIN. CODE §§ 37.921 and 335.24(k).
5. As evidenced by Finding of Fact No. 2.d, Respondent failed to obtain authorization to construct and operate sources of air emissions, in violation of TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), and 30 TEX. ADMIN. CODE § 116.110(a).
6. As evidenced by Finding of Fact No. 4, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
7. As evidenced by Finding of Fact No. 7, Respondent was provided proper notice of the evidentiary hearing in accordance with TEX. GOV’T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.

8. As evidenced by Findings of Fact Nos. 8 and 9, Respondent failed to appear for the evidentiary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of twelve thousand four hundred ninety-six dollars (\$12,496.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. 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 twelve thousand four hundred ninety-six dollars (\$12,496.00) for violations of state statutes and 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: I. 35 SANDPIT, INC.; Docket No. 2013-0670-MLM-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
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 the construction and/or operation of sources of air emissions at the Site until such time as a permit or authorization is obtained; and
 - ii. Submit form PI-7 to register for a Permit by Rule ("PBR") to obtain authorization for the grinder, in accordance with 30 TEX. ADMIN. CODE § 116.110(a) to:

Air Permits Division, MC 162
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Order, Respondent shall:
- i. Provide notification which includes an accurate description of recycling activities, in accordance with 30 TEX. ADMIN. CODE § 335.6;
 - ii. Provide a written cost estimate for closure of the Site, in accordance with 30 TEX. ADMIN. CODE § 335.24(j); and
 - iii. Submit documentation to demonstrate acceptable financial assurance for closure of the Site, in accordance with 30 TEX. ADMIN. CODE §§ 37.921 and 335.24(k) to:

Financial Assurance Team, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the PBR application within 30 days after the date of such request, or by any other deadline specified in writing.

- c. Within 60 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a.i. through 3.b.iii. The certifications shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

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. Extension requests shall be sent to the Order Compliance Team at the address listed in Ordering Provision No. 3.c.
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 JIM SALLANS

STATE OF TEXAS

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COUNTY OF TRAVIS

"My name is Jim Sallans. 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.

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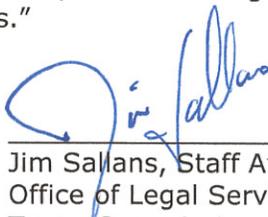
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Respondent failed to appear at the hearing on July 25, 2014. At that hearing, I requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the TCEQ for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

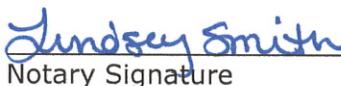
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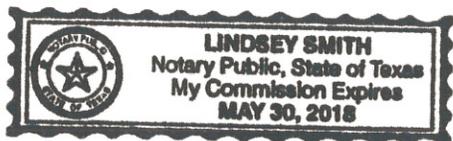
Jim Sallans, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, 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.

Subscribed to and sworn before me on this 5th day of November, A.D. 2014.



Notary Signature



Notary without Bond