

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 46666  
Vista International Technologies, Inc.  
RN100750645  
Docket No. 2013-0756-MSW-E

**Order Type:**

Agreed Order

**Media:**

MSW

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

1323 E. Fulghum Road, Hutchins, Dallas County

**Type of Operation:**

scrap tire storage and processing facility

**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:** May 23, 2014

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$70,498

**Total Paid to General Revenue:** \$1,968

**Total Due to General Revenue:** \$68,530

Payment Plan: 35 payments of \$1,958 each

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – High  
Site/RN – High

**Major Source:** Yes

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Investigation Information**

**Complaint Date(s):** N/A

**Date(s) of Investigation:** January 23, 2013

**Date(s) of NOV(s):** September 10, 2012

**Date(s) of NOE(s):** March 5, 2013

**Vista International Technologies, Inc.**

RN100750645

Docket No. 2013-0756-MSW-E

**Violation Information**

1. Failed to limit the number of whole used or scrap tires on the ground to a maximum of three piles (there were four whole/scrap tire piles at the Facility), and failed to split, quarter, or shred scrap tires within 90 days from the date of delivery to the Facility [30 TEX. ADMIN. CODE § 328.61(b) and (e)].
2. Failed to maintain tire piles consisting of scrap tires or tire pieces at heights no greater than 15 feet and covering an area less than 8,000 square feet [30 TEX. ADMIN. CODE § 328.61(b)(1)].
3. Failed to demonstrate financial assurance for closure, post closure, and corrective action for the Facility [30 TEX. ADMIN. CODE § 328.71(g)].

**Corrective Actions/Technical Requirements****Corrective Action(s) Completed:**

1. On March 15, 2013, Respondent submitted documentation that one of the tire piles was removed, leaving three tire piles at the Facility.
2. On April 30, 2013, Respondent submitted documentation demonstrating that the scrap tire piles meets regulatory size requirements.

**Technical Requirements:**

1. Immediately cease storing, processing and/or disposing of scrap tires at the Facility except as authorized by Tire Registration No. 6044115.
2. Within 30 days:
  - a. Develop and implement procedures to ensure that all used or scrap tires are split, quartered, or shredded within 90 days of receipt; and
  - b. Submit documentation to demonstrate acceptable financial assurance for the Facility.
3. Within 45 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1 and 2.

**Litigation Information**

<b>Date Petition(s) Filed:</b>	September 20, 2013
<b>Date Answer(s) Filed:</b>	October 11, 2013
<b>SOAH Referral Date:</b>	November 14, 2013
<b>Hearing Date(s):</b>	
Preliminary hearing:	January 2, 2014
Evidentiary hearing:	April 8, 2014 (scheduled)
<b>Settlement Date:</b>	March 27, 2014

**Contact Information**

**TCEQ Attorneys:** Jennifer Cook, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Eli Martinez, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Margarita Dennis, Enforcement Division, (817) 588-5892

**TCEQ Regional Contact:** Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5903

**Respondent:** Tim Ruddy, CEO, Vista International Technologies, Inc., 5151 East 56th Avenue, Suite 101, Commerce City, Colorado 80022

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	4-Mar-2013	<b>Screening</b>	11-Apr-2013	<b>EPA Due</b>	
	<b>PCW</b>	24-Jul-2013				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Vista International Technologies, Inc.				
<b>Reg. Ent. Ref. No.</b>	RN100750645				
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Major		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	46666	<b>No. of Violations</b>	3
<b>Docket No.</b>	2013-0756-MSW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Margarita Dennis
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$45,000
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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.

<b>Compliance History</b>	-5.0% Reduction	<b>Subtotals 2, 3, &amp; 7</b>	-\$2,250
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Notes: Recommended reduction for high performer classification and enhancement for one NOV with same violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$3,750
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<b>Economic Benefit</b>	50.0% Enhancement*	<b>Subtotal 6</b>	\$16,607
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Total EB Amounts: \$16,607  
 Approx. Cost of Compliance: \$136,421  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$55,607
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	26.8%	<b>Adjustment</b>	\$14,891
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost associated with violation 3.

<b>Final Penalty Amount</b>	\$70,498
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$70,498
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$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.

<b>PAYABLE PENALTY</b>	\$70,498
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**Screening Date** 11-Apr-2013

**Docket No.** 2013-0756-MSW-E

**PCW**

**Respondent** Vista International Technologies, Inc.

*Policy Revision 3 (September 2011)*

**Case ID No.** 46666

*PCW Revision August 3, 2011*

**Reg. Ent. Reference No.** RN100750645

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Margarita Dennis

### 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> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	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**

Recommended reduction for high performer classification and enhancement for one NOV with same violations.

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

**>> Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%**

<b>Screening Date</b>	11-Apr-2013	<b>Docket No.</b>	2013-0756-MSW-E	<b>PCW</b>
<b>Respondent</b>	Vista International Technologies, Inc.			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	46666			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN100750645			
<b>Media [Statute]</b>	Municipal Solid Waste			
<b>Enf. Coordinator</b>	Margarita Dennis			

**Violation Number**

**Rule Cite(s)**

30 Tex. Admin. Code §328.61(b) and (e)

**Violation Description**

Failed to limit the number of whole used or scrap tires on the ground to a maximum of three piles. Specifically, there were four whole/scrap tire piles at the Facility. Failed to split, quarter, or shred scrap tires within 90 days from the date of delivery.

**Base Penalty**

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

**OR**

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

**Percent**

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Percent**

**Matrix Notes**

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

Two monthly events are recommended from the January 23, 2013 investigation to the March 15, 2013 compliance date.

**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" value="x"/>
N/A	<input type="text"/>	(mark with x)

**Notes**

The Respondent achieved compliance on March 15, 2013 after the Notice of Enforcement (NOE) dated March 5, 2013.

**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** Vista International Technologies, Inc.  
**Case ID No.** 46666  
**Reg. Ent. Reference No.** RN100750645  
**Media Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**   **Date Required**   **Final Date**   **Yrs**   **Interest Saved**   **Onetime Costs**   **EB Amount**  
**Item Description**   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)	\$450	23-Jan-2013	15-Mar-2013	0.14	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to remove and dispose of approximately 150 scrap tires at an authorized facility. Date required is the investigation date. Final date is the date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$450

**TOTAL** \$3

Screening Date 11-Apr-2013

Docket No. 2013-0756-MSW-E

PCW

Respondent Vista International Technologies, Inc.

Policy Revision 3 (September 2011)

Case ID No. 46666

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100750645

Media [Statute] Municipal Solid Waste

Enf. Coordinator Margarita Dennis

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §328.61(b)(1)

Violation Description

Failed to maintain tire piles consisting of scrap tires or tire pieces at heights no greater than 15 feet and cover an area less than 8,000 square feet. Specifically, scrap tire pile number 18 at the Facility is approximately 25 feet tall and covers an area of 9,440 square feet.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 3

78 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$22,500

Three monthly events are recommended from the January 23, 2013 investigation to the April 11, 2013 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$2,250

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

Notes

The Respondent achieved compliance on April 30, 2013 after the NOE dated March 5, 2013.

Violation Subtotal \$20,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,713

Violation Final Penalty Total \$31,264

This violation Final Assessed Penalty (adjusted for limits) \$31,264

# Economic Benefit Worksheet

**Respondent** Vista International Technologies, Inc.  
**Case ID No.** 46666  
**Reg. Ent. Reference No.** RN100750645  
**Media Violation No.** Municipal Solid 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
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)	\$128,880	23-Jan-2013	30-Apr-2013	0.27	\$1,713	n/a	\$1,713

**Notes for DELAYED costs**  
 Estimated cost to reduce the tire pile by disposing of approximately 42,960 excess tires. Date required is the investigation date. Final date is the date of compliance.

### Avoided Costs

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

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

**Notes for AVOIDED costs**

<b>Approx. Cost of Compliance</b>	\$128,880	<b>TOTAL</b>	\$1,713
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Screening Date 11-Apr-2013

Docket No. 2013-0756-MSW-E

PCW

Respondent Vista International Technologies, Inc.

Policy Revision 3 (September 2011)

Case ID No. 46666

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100750645

Media [Statute] Municipal Solid Waste

Enf. Coordinator Margarita Dennis

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code §328.71(g)

Violation Description

Failed to demonstrate financial assurance for closure, post closure, and corrective action for the Facility. Specifically, the Facility stopped making payments on its letter of credit on December 1, 2011.

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 15.0%

Matrix Notes

100% of the rule requirement was not met

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 2

419 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$7,500

Two annual events are 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 \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$14,891

Violation Final Penalty Total \$16,051

This violation Final Assessed Penalty (adjusted for limits) \$16,051

# Economic Benefit Worksheet

**Respondent** Vista International Technologies, Inc.  
**Case ID No.** 46666  
**Reg. Ent. Reference No.** RN100750645  
**Media Violation No.** Municipal Solid Waste  
 3

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**   **Date Required**   **Final Date**   **Yrs**   **Interest Saved**   **Onetime Costs**   **EB Amount**  
**Item Description**   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]	\$7,091	1-Dec-2011	23-Jan-2013	2.00	\$709	\$14,182	\$14,891
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 to provide financial assurance, per Closure Cost Estimate submitted by Respondent, for the Facility. Date required is the date the Facility stopped making annual payments on its letter of credit. Final date is the investigation date.

Approx. Cost of Compliance \$7,091

**TOTAL** \$14,891

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 CN603579590, RN100750645, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN603579590, Vista International Technologies, Inc. **Classification:** HIGH **Rating:** 0.00  
**Regulated Entity:** RN100750645, VISTA INTERNATIONAL TECHNOLOGIES **Classification:** HIGH **Rating:** 0.00  
**Complexity Points:** 3 **Repeat Violator:** NO  
**CH Group:** 06 - Electric Power Generation  
**Location:** 1323 E FULGHUM RD, HUTCHINS, TX 75141-4248, DALLAS COUNTY  
**TCEQ Region:** REGION 04 - DFW METROPLEX  
**ID Number(s):** **AIR NEW SOURCE PERMITS** ACCOUNT NUMBER DB5238A  
**TIRES** REGISTRATION 6044115  
**TIRES** REGISTRATION 27080

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

**Date Compliance History Report Prepared:** April 11, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** April 11, 2008 to April 11, 2013

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

**Name:** Margarita Dennis

**Phone:** (817) 588-5892

## 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:**

N/A

### **B. Criminal convictions:**

N/A

### **C. Chronic excessive emissions events:**

N/A

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

Item 1 October 22, 2008 (701225)

### **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.

#### **1 Date: 09/10/2012 (1021719)**

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.61(b)

Description: Failure to limit the number of whole used or scrap tires on the ground to a maximum of three piles.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.61(b)(1)

Description: Failure to tire piles consisting of scrap tires or tire pieces at heights no greater than 15 feet and cover an area less than 8,000 square feet.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.61(e)

Description: Failure to split, quarter, or shred scrap tires within 90 days from the date of delivery.

### **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  
CONCERNING  
VISTA INTERNATIONAL  
TECHNOLOGIES, INC.;  
RN100750645**

**§  
§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**AGREED ORDER**

**DOCKET NO. 2013-0756-MSW-E**

**I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Vista International Technologies, Inc. ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent together stipulate that:

1. Respondent owns and operates a scrap tire storage and processing facility located at 1323 E. Fulghum Road in Hutchins, Dallas County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The TCEQ has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Executive Director and Respondent agree that TCEQ has jurisdiction to enter this Agreed Order, and that Respondent is subject to TCEQ's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of seventy thousand four hundred ninety-eight dollars (\$70,498.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid one thousand nine hundred sixty-eight dollars (\$1,968.00) of the administrative penalty. The remaining amount of sixty-eight thousand five hundred thirty dollars (\$68,530.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of one thousand nine hundred fifty-eight dollars (\$1,958.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. 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.
7. The Executive Director and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
8. 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 Respondent has not complied with one or more of the terms or conditions contained in this Agreed Order.
9. 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.
10. 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.
11. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
  - a. On March 15, 2013, Respondent submitted documentation that one of the tire piles was removed leaving three tire piles at the Facility; and
  - b. On April 30, 2013, Respondent submitted documentation demonstrating that scrap tire pile number 18 meets regulatory size requirements.

## **II. ALLEGATIONS**

1. During an investigation conducted on January 23, 2013, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent:
  - a. Failed to limit the number of whole used or scrap tires on the ground to a maximum of three piles (there were four whole/scrap tire piles at the Facility), and failed to split, quarter, or shred scrap tires within 90 days from the date of delivery to the Facility, in violation of 30 TEX. ADMIN. CODE § 328.61(b) and (e);
  - b. Failed to maintain tire piles consisting of scrap tires or tire pieces at heights no greater than 15 feet and covering an area less than 8,000 square feet, in violation of 30 TEX. ADMIN. CODE § 328.61(b)(1). Specifically, scrap tire pile number 18 at the Facility was approximately 25 feet tall and covers an area of approximately 9,440 square feet; and
  - c. Failed to demonstrate financial assurance for closure, post closure, and corrective action for the Facility, in violation of 30 TEX. ADMIN. CODE § 328.71(g). Specifically, Respondent stopped making payments on its letter of credit on December 1, 2011.
2. Respondent received notice of the violations on or about March 10, 2013.

## **III. DENIALS**

Respondent generally denies each Allegation in Section II.

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Vista International Technologies, Inc., Docket No. 2013-0756-MSW-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

2. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, Respondent shall cease storing, processing and/or disposing of scrap tires at the Facility except as authorized by Tire Registration No. 6044115.
  - b. Within 30 days after the effective date of this Agreed Order, Respondent shall:
    - i. Develop and implement procedures to ensure that all used or scrap tires are split, quartered, or shredded within 90 days of receipt, in accordance with 30 TEX. ADMIN. CODE § 328.61(e); and
    - ii. Submit documentation to demonstrate acceptable financial assurance for the Facility, in accordance with 30 TEX. ADMIN. CODE § 328.71(g) to:

Financial Assurance Team, MC 184  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087
  - c. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 2.a. through 2.b.ii. The certification 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 certification 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  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth TX 76118-6951

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If Respondent fails 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, Respondent's failure to comply is not a violation of this Agreed 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.
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 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.
7. This Agreed Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by the TCEQ 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. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails a copy of the fully executed Agreed Order to Respondent, whichever is earlier.

**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Vista International Technologies, Inc., 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature - Tim Ruddy, CEO  
Vista International Technologies, Inc.

  
\_\_\_\_\_  
Date