

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 46367
Natividad Hernandez d/b/a Bayer Road Salvage Yard
RN106447550
Docket No. 2014-1210-WQ-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Indifference to legal duty based on violation of a previous order.

Media:

Water Quality

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

3599 Bayer Road, Victoria, Victoria County

Type of Operation:

salvage yard

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 22, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: \$15,500

Total Paid to General Revenue: \$1,636

Total Due to General Revenue: \$13,864

Payment Plan: 32 payments of \$430 each and 1 payment of \$104

Compliance History Classifications:

Person/CN – Unsatisfactory
Site/RN – Unsatisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: June 17 - July 1, 2014
Date(s) of NOV(s): N/A
Date(s) of NOE(s): August 15, 2014

Violation Information

1. Failed to develop and implement a Stormwater Pollution Prevention Plan ("SWP3") [30 TEX. ADMIN. CODE § 281.25(a)(4), 40 C.F.R. § 122.26(c), Texas Pollutant Discharge Elimination System ("TPDES") Stormwater Multi-Sector General Permit ("MSGP") No. TXR05BV17, Part II Section C.4. and Part III Sections A.1. through A.5., and TCEQ Agreed Order Docket No. 2013-0458-WQ-E, Ordering Provisions Nos. 2.b. through 2.d].
2. Failed to prevent the discharge of industrial waste into or adjacent to any water in the state [TEX. WATER CODE § 26.121(a), TPDES Stormwater MSGP No. TXR05BV17, Part III Section A.4., and TCEQ Agreed Order Docket No. 2013-0458-WQ-E, Section IV. Ordering Provision No. 2.a].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days:
 - a. Properly remove and dispose of contaminated soil from all affected areas of the Facility; and
 - b. Develop and submit a SWP3.
2. Within 45 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1.a. and 1.b.
3. Within 75 days, submit written certification that the SWP3 has been implemented at the Facility.

Litigation Information

Date Petition(s) Filed: February 19, 2015
Date Answer Filed: N/A
Settlement Date: April 10, 2015

Contact Information

TCEQ Attorneys: Jake Marx, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Jill Russell, Enforcement Division, (512) 239-4564
TCEQ Regional Contact: Kelly Ruble, Corpus Christi Regional Office, (361) 825-3100
Respondent Contact: Natividad Hernandez, 3599 Bayer Road, Victoria, Texas 77905
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

| | | | | |
|--------------|-----------------|-------------|------------------|------------|
| DATES | Assigned | 18-Aug-2014 | | |
| | PCW | 18-Jun-2015 | Screening | 4-Nov-2014 |
| | | | EPA Due | |

| | |
|--|---|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Natividad Hernandez dba Bayer Road Salvage Yard |
| Reg. Ent. Ref. No. | RN106447550 |
| Facility/Site Region | 14-Corpus Christi |
| Major/Minor Source | Minor |

| | | | |
|--|----------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 46367 | No. of Violations | 2 |
| Docket No. | 2014-1210-WQ-E | Order Type | Findings |
| Media Program(s) | Water Quality | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Jill Russell |
| | | EC's Team | Enforcement Team 3 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$25,000 |

Penalty Calculation Section

| | | |
|---|-------------------|----------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$10,000 |
|---|-------------------|----------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|-------------------|--------------------------------|---------|
| Compliance History | 55.0% Enhancement | Subtotals 2, 3, & 7 | \$5,500 |
|---------------------------|-------------------|--------------------------------|---------|

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

| | | | | |
|--------------------|----|------------------|-------------------|-----|
| Culpability | No | 0.0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|------------------|-------------------|-----|

Notes: The Respondent does not meet the culpability criteria.

| | | |
|--|-------------------|-----|
| Good Faith Effort to Comply Total Adjustments | Subtotal 5 | \$0 |
|--|-------------------|-----|

| | | | |
|-------------------------|-------------------|-------------------|-----|
| Economic Benefit | 0.0% Enhancement* | Subtotal 6 | \$0 |
|-------------------------|-------------------|-------------------|-----|

Total EB Amounts: \$702
 Estimated Cost of Compliance: \$8,000
 *Capped at the Total EB \$ Amount

| | | |
|-----------------------------|-----------------------|----------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$15,500 |
|-----------------------------|-----------------------|----------|

| | | | |
|---|------|-------------------|-----|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 0.0% | Adjustment | \$0 |
|---|------|-------------------|-----|

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$15,500

| | | |
|-----------------------------------|-------------------------------|----------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$15,500 |
|-----------------------------------|-------------------------------|----------|

| | | | |
|-----------------|----------------|-------------------|-----|
| DEFERRAL | 0.0% Reduction | Adjustment | \$0 |
|-----------------|----------------|-------------------|-----|

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

Notes:

Deferral not offered for non-expedited settlement

| | |
|------------------------|----------|
| PAYABLE PENALTY | \$15,500 |
|------------------------|----------|

Screening Date 4-Nov-2014

Docket No. 2014-1210-WQ-E

PCW

Respondent Natividad Hernandez dba Bayer Road Salvage Yard

Policy Revision 4 (April 2014)

Case ID No. 46367

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106447550

Media [Statute] Water Quality

Enf. Coordinator Jill Russell

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 judgments 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) 20%

>> **Repeat Violator (Subtotal 3)**

Yes

Adjustment Percentage (Subtotal 3) 25%

>> **Compliance History Person Classification (Subtotal 7)**

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> **Compliance History Summary**

Compliance History Notes

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

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 55%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 55%

Screening Date 4-Nov-2014 **Docket No.** 2014-1210-WQ-E **PCW**
Respondent Natividad Hernandez dba Bayer Road Salvage Yard *Policy Revision 4 (April 2014)*
Case ID No. 46367 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN106447550
Media [Statute] Water Quality
Enf. Coordinator Jill Russell

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(c), Texas Pollutant Discharge Elimination System ("TPDES") Stormwater Multi-Sector General Permit No. TXR05BV17, Part II. Section C.4 and Part III. Sections A.1 through A.5 and TCEQ Agreed Order Docket No. 2013-0458-WQ-E, Section IV. Ordering Provisions Nos. 2.b through 2.d.

Violation Description Failed to develop and implement a Stormwater Pollution Prevention Plan ("SWP3"), as documented during an investigation conducted on June 17, 2014.

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="5.0%"/> |
| | Potential | <input type="text"/> | <input checked="" type="checkbox"/> | <input type="text"/> | |

>> Programmatic Matrix

| | Falsification | Major | Moderate | Minor | Percent |
|--|----------------------|----------------------|----------------------|----------------------|-----------------------------------|
| | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="0.0%"/> |

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants that would not 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

mark only one with an x

| | |
|--------------|-------------------------------------|
| daily | <input type="text"/> |
| weekly | <input type="text"/> |
| monthly | <input type="text"/> |
| quarterly | <input checked="" type="checkbox"/> |
| semiannual | <input type="text"/> |
| annual | <input type="text"/> |
| single event | <input type="text"/> |

Violation Base Penalty

Four quarterly events are recommended from the effective date of TCEQ Agreed Order Docket No. 2013-0458-WQ-E (September 26, 2013) to the screening date (August 21, 2014).

Good Faith Efforts to Comply

Reduction

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

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

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 Natividad Hernandez dba Bayer Road Salvage Yard
Case ID No. 46367
Reg. Ent. Reference No. RN106447550
Media Water Quality
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) | \$5,000 | 26-Sep-2013 | 29-Jun-2015 | 1.76 | \$439 | n/a | \$439 |

Notes for DELAYED costs

Estimated cost to develop and implement a SWP3. Date Required is the effective date of TCEQ Agreed Order Docket No. 2013-0458-WQ-E. 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

\$5,000

TOTAL

\$439

Screening Date 4-Nov-2014 **Docket No.** 2014-1210-WQ-E **PCW**
Respondent Natividad Hernandez dba Bayer Road Salvage Yard *Policy Revision 4 (April 2014)*
Case ID No. 46367 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN106447550
Media [Statute] Water Quality
Enf. Coordinator Jill Russell

Violation Number 2
Rule Cite(s) Tex. Water Code § 26.121(a), TPDES Stormwater Multi-Sector General Permit No. TXR05BV17, Part III. Section A.4 and TCEQ Agreed Order Docket No. 2013-0458-WQ-E, Section IV. Ordering Provisions No. 2.a.
Violation Description Failed to prevent the discharge of industrial waste into or adjacent to any water in the state, as documented during an investigation conducted on July 1, 2014. Specifically, it was documented that while the Respondent had excavated the contaminated soil identified in TCEQ Agreed Order Docket No. 2013-0458-WQ-E, the contaminated soil had not been disposed of properly. Additional areas of contaminated soil were also documented throughout the Facility.

Base Penalty \$25,000

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

| OR | Release | Harm | | | Percent |
|----|-----------|-------|----------|-------|---------|
| | | Major | Moderate | Minor | |
| | Actual | | | X | 5.0% |
| | Potential | | | | |

>> **Programmatic Matrix**

| | Falsification | Major | Moderate | Minor | Percent |
|--|---------------|-------|----------|-------|---------|
| | | | | | 0.0% |

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 4 329 Number of violation days

mark only one with an x

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | X |
| semiannual | |
| annual | |
| single event | |

Violation Base Penalty \$5,000

Four quarterly events are recommended from the effective date of TCEQ Agreed Order Docket No. 2013-0458-WQ-E (September 26, 2013) to the screening date (August 21, 2014).

Good Faith Efforts to Comply 0.0% Reduction \$0

| | Before NOE/NOV | NOE/NOV to EDPRP/Settlement Offer |
|---------------|----------------|-----------------------------------|
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark w th x) |

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

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$263 **Violation Final Penalty Total** \$7,750

This violation Final Assessed Penalty (adjusted for limits) \$7,750

Economic Benefit Worksheet

Respondent Natividad Hernandez dba Bayer Road Salvage Yard
Case ID No. 46367
Reg. Ent. Reference No. RN106447550
Media Water Quality
Violation No. 2

| 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 | \$3,000 | 26-Sep-2013 | 29-Jun-2015 | 1.76 | \$263 | n/a | \$263 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs Estimated costs to properly remove and dispose of contaminated soil from all affected areas. Date Required is the effective date of TCEQ Agreed Order Docket No. 2013-0458-WQ-E. 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 \$3,000

TOTAL \$263

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

PENDING Compliance History Report for CN604102178, RN106447550, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN604102178, Natividad Hernandez **Classification:** UNSATISFACTORY **Rating:** 89.29

Regulated Entity: RN106447550, Bayer Road Salvage Yard **Classification:** UNSATISFACTORY **Rating:** 89.29

Complexity Points: 6 **Repeat Violator:** YES

CH Group: 14 - Other

Location: 3599 Bayer Road, Victoria, Victoria County, Texas

TCEQ Region: REGION 14 - CORPUS CHRISTI

ID Number(s): **STORMWATER PERMIT** TXR05BV17
WATER QUALITY NON PERMITTED ID NUMBER R14106447550
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER COU0058
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER UNA455140123
TIRES REGISTRATION COT0021

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: October 24, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: October 24, 2009 to October 24, 2014

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

Name: Jill Russell

Phone: (512) 239-4564

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 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: 09/26/2013 ADMINORDER 2013-0458-WQ-E (1660 Order-Agreed Order With Denial)

Classification: Major

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(c)

Rqmt Prov: TPDES General Permit No. TXR050000 PERMIT

Description: Failed to obtain authorization to discharge storm water runoff associated with industrial activities under Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR050000.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

Description: Failed to prevent the discharge of industrial waste into or adjacent to water in the state. Specifically, oil spill stains were documented on the dirt pathway inside the Facility.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

N/A

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

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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
NATIVIDAD HERNANDEZ DBA
BAYER ROAD SALVAGE YARD;
RN106447550**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2014-1210-WQ-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Natividad Hernandez d/b/a Bayer Road Salvage Yard ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Order to the Commission.

Respondent understands that he has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon Respondent.

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

FINDINGS OF FACT

1. Respondent owns and operates a salvage yard located at 3599 Bayer Road in Victoria, Victoria County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During an investigation conducted on June 17, 2014 through July 1, 2014, an investigator documented that Respondent:
 - a. Failed to develop and implement a Stormwater Pollution Prevention Plan ("SWP3"); and
 - b. Failed to prevent the discharge of industrial waste into or adjacent to any water in the state. Specifically, Respondent excavated the contaminated soil identified in TCEQ Agreed Order Docket No. 2013-0458-WQ-E, and the contaminated soil had not been disposed of properly. Additional areas of contaminated soil were also documented throughout the Facility.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.

2. As evidenced by Finding of Fact No. 2.a., Respondent failed to develop and implement a SWP3, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), 40 C.F.R. § 122.26(c), Texas Pollutant Discharge Elimination System ("TPDES") Stormwater Multi-Sector General Permit No. TXR05BV17, Part II Section C.4. and Part III Sections A.1. through A.5., and TCEQ Agreed Order Docket No. 2013-0458-WQ-E, Ordering Provisions Nos. 2.b. through 2.d.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to prevent the discharge of industrial waste into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121(a), TPDES Stormwater Multi-Sector General Permit No. TXR05BV17, Part III Section A.4., and TCEQ Agreed Order Docket No. 2013-0458-WQ-E, Section IV. Ordering Provision No. 2.a.
4. Pursuant to TEX. WATER CODE § 7.051, TCEQ 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.
5. An administrative penalty in the amount of fifteen thousand five hundred dollars (\$15,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondent paid one thousand six hundred thirty-six dollars (\$1,636.00) of the penalty. The remaining amount of thirteen thousand eight hundred sixty-four dollars (\$13,864.00) shall be paid in thirty-two (32) monthly payments of four hundred thirty dollars (\$430.00) each and one final payment of one hundred four dollars (\$104.00). The first monthly payment shall be paid within 30 days after the effective date of this 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 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 Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Order.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 5 for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all requirements set forth in this Order resolve only 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 violations which are not raised here. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Re: Natividad Hernandez d/b/a Bayer Road Salvage Yard, Docket No. 2014-1210-WQ-E" to:

Financial Administration Division, Revenue Operations 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. Within 30 days after the effective date of this Order:
 - i. Properly remove and dispose of contaminated soil from all affected areas of the Facility;
 - ii. Develop and submit a SWP3, in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4) and TPDES Multi-Sector General Permit No. TXR05BV17, to:

Water Section Manager
Texas Commission on Environmental Quality
Corpus Christi Regional Office
NRC Building, Suite 1200
6300 Ocean Drive, Unit 5839
Corpus Christi, Texas 78412-5839

Respondent shall respond completely and adequately, as determined by TCEQ, to any requests for information concerning the SWP3 and address any deficiencies identified by the TCEQ Corpus Christi Regional Office within 30 days of such request or by any other deadline specified in writing by the TCEQ.

- b. Within 45 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 2.d., to demonstrate compliance with Ordering Provisions Nos. 2.a.i. and 2.a.ii.
- c. Within 75 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 2.d., that the SWP3 has been implemented at the Facility;
- d. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, 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:

Water Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
NRC Building, Suite 1200
6300 Ocean Drive, Unit 5839
Corpus Christi, Texas 78412-5839

3. All relief not expressly granted in this Order is denied.
4. 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 Facility operations referenced in this Order.
5. 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 above.
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. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the Office of the Attorney General of the State of Texas ("OAG") to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by TCEQ under such a statute. The Executive Director may, without further notice or hearing, refer this matter to the OAG for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
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. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.

11. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Order is the date of hand delivery of the fully executed Order to Respondent, or three days after the date on which the Commission mails a copy of the fully executed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of the fully executed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

August 20, 2015
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, 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.

x _____
Signature - Natividad Hernandez
Bayer Road Salvage Yard
3599 Bayer Road
Victoria, Texas 77905

July 28, 2015
Date

If mailing address has changed, please check this box and provide the new address below:


