

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 48116
Thomas E. Rutherford, William R. Rutherford, and Edina Bendure
RN106643950
Docket No. 2014-0053-MLM-E

Order Type:

Default Order

Media:

MSW and AIR

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

east side of Cowan Road about one mile past the intersection of Buckhorn Cemetery Road, Moody, Bell County

Type of Operation:

unauthorized municipal solid waste ("MSW") disposal and a scrap tire storage site

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: October 9, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: \$16,129

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$16,129

Compliance History Classifications:

Person/CN – Satisfactory (All 3 Respondents)
Site/RN – Satisfactory

Major Source: Yes

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: March 22, 2013; November 19, 2013
Date(s) of NOV(s): May 21, 2013
Date(s) of NOE(s): December 18, 2013

Violation Information

1. Failed to prohibit the burning of MSW for the purpose of disposal (approx. 150 tires and 10 cu/yd. of MSW) [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 111.201].
2. Failed to prevent unauthorized disposal of MSW (approx. 20 cu/yd.) [30 TEX. ADMIN. CODE § 330.15(c)].
3. Failed to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in lockable containers (approx. 1,200 scrap tires were being stored on the ground) [30 TEX. ADMIN. CODE § 328.60(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
N/A

Technical Requirements:

1. Immediately, cease burning and disposing of any additional MSW at the Site.
2. Within 30 days, remove all MSW from the Site and dispose of it at an authorized facility.
3. Within 45 days, either obtain a scrap tire storage registration for the Site or remove all of the scrap tires from the Site and dispose of them at an authorized facility.
4. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: May 28, 2015
Date Green Card(s) Signed: May 29, 2015 (Edina Bendure)
June 10, 2015 (William Rutherford)
June 15, 2015 (Thomas Rutherford)
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Jacquelyn Boutwell, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Danielle Porras, Enforcement Division, (713) 767-3682

TCEQ Regional Contact: David Mann, Waco Regional Office, (254) 751-0335

Respondent Contact: Thomas E. Rutherford, 7606 Niederwald Strasse, Kyle, Texas 78640;
William R. Rutherford, 16801 Cowan Road Moody, Texas 76557; Edina Bendure, 134 Ottoway Drive Temple, Texas 76501

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	6-Jan-2014	Screening	13-Jan-2014	EPA Due	
	PCW	10-Jun-2014				

RESPONDENT/FACILITY INFORMATION

Respondent	Thomas E. Rutherford, William R. Rutherford, and Edina Bendure		
Reg. Ent. Ref. No.	RN106643950		
Facility/Site Region	11-Austin	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	48116	No. of Violations	3
Docket No.	2014-0053-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Air	Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$15,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$750
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Notes	Enhancement due to one NOV with same/similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondents do not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$474	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,611	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$15,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	2.4%	Adjustment	\$379
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to capture the avoided cost of compliance associated with violation no. 1.
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Final Penalty Amount	\$16,129
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$16,129
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$16,129
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Screening Date 13-Jan-2014

Docket No. 2014-0053-MLM-E

PCW

Respondent Thomas E. Rutherford, William R. Rutherford, and

Policy Revision 3 (September 2011)

Case ID No. 48116

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106643950

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

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

Enhancement due to one NOV with same/similar violations.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date 13-Jan-2014

Docket No. 2014-0053-MLM-E

PCW

Respondent Thomas E. Rutherford, William R. Rutherford, and Edina Bendure

Policy Revision 3 (September 2011)

Case ID No. 48116

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106643950

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s)

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

Violation Description

Failed to prohibit the burning of municipal solid waste ("MSW") for the purpose of disposal. Specifically, approximately 150 tires (15 cubic yards) and ten cubic yards of MSW were burned without authorization.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			x	15.0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0.0%

Matrix Notes

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 55 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the November 19, 2013 record review to the January 13, 2014 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$379

Violation Final Penalty Total \$4,032

This violation Final Assessed Penalty (adjusted for limits) \$4,032

Economic Benefit Worksheet

Respondent Thomas E. Rutherford, William R. Rutherford, and Edina Bendure
Case ID No. 48116
Reg. Ent. Reference No. RN106643950
Media Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$379	21-Mar-2013	22-Mar-2013	0.00	\$0	\$379	\$379
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to have properly disposed of the MSW at an authorized facility rather than burning. The Date Required is one day prior to the investigation and the Final Date is the investigation date.

Approx. Cost of Compliance \$379

TOTAL \$379

Screening Date 13-Jan-2014

Docket No. 2014-0053-MLM-E

PCW

Respondent Thomas E. Rutherford, William R. Rutherford, and Edina Bendure

Policy Revision 3 (September 2011)

Case ID No. 48116

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106643950

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 330.15(c)

Violation Description

Failed to prevent unauthorized disposal of MSW. Specifically, approximately 20 cubic yards of paint cans, kerosene cans, foam, furniture, a riding lawnmower, treated lumber, rusty appliances, and bed frames were disposed of at the Site.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

55 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the November 19, 2013 record review to the January 13, 2014 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$18

Violation Final Penalty Total \$4,032

This violation Final Assessed Penalty (adjusted for limits) \$4,032

Economic Benefit Worksheet

Respondent Thomas E. Rutherford, William R. Rutherford, and Edina Bendure
Case ID No. 48116
Reg. Ent. Reference No. RN106643950
Media Violation No. Municipal Solid Waste
 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	\$232	22-Mar-2013	3-Oct-2014	1.53	\$18	n/a	\$18
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost to remove the MSW and dispose of it at a facility authorized to accept the waste. The Date Required is the initial 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 \$232

TOTAL \$18

Screening Date 13-Jan-2014 **Docket No.** 2014-0053-MLM-E **PCW**
Respondent Thomas E. Rutherford, William R. Rutherford, and Edina Bendure *Policy Revision 3 (September 2011)*
Case ID No. 48116 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN106643950
Media [Statute] Municipal Solid Waste
Enf. Coordinator Danielle Porras

Violation Number

Rule Cite(s)

Violation Description

Failed to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in lockable containers. Specifically, there were approximately 1,200 scrap tires (120 cubic yards) being stored at the Site.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

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

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/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 Thomas E. Rutherford, William R. Rutherford, and Edina Bendure
Case ID No. 48116
Reg. Ent. Reference No. RN106643950
Media Violation No. Municipal Solid 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	\$1,000	22-Mar-2013	3-Oct-2014	1.53	\$77	n/a	\$77
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a scrap tire registration. The Date Required is the initial 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

\$1,000

TOTAL

\$77

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Compliance History Report

PUBLISHED Compliance History Report for CN604312397, RN106643950, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator:	CN604312397, Thomas E. Rutherford	Classification:	SATISFACTORY	Rating:	12.00	
Regulated Entity:	RN106643950, BELL COUNTY PID 101746	Classification:	SATISFACTORY	Rating:	12.00	
Complexity Points:	0	Repeat Violator:	NO			
CH Group:	14 - Other					
Location:	Property on the east side of Cowan Road about 1 mile past the intersection with Buckhorn Cemetery Road, Moody, TX, Bell County					
TCEQ Region:	REGION 09 - WACO					
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R09106643950					
Compliance History Period:	September 01, 2008 to August 31, 2013	Rating Year:	2013	Rating Date:	09/01/2013	
Date Compliance History Report Prepared:	May 6, 2014					
Agency Decision Requiring Compliance History:	Enforcement					
Component Period Selected:	January 13, 2009 to January 13, 2014					
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.						
Name:	Danielle Porras				Phone:	(713) 767-3682

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:

N/A

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.

1 Date: 05/21/2013 (1075968)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THSC Chapter 382 382.085(b)

Description: Failed to prohibit the burning of MSW for the purpose of disposal

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)

Description: Failed to prevent the unauthorized disposal of MSW

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.60(a)

Description: Failed to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in lockable containers.

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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Compliance History Report

PUBLISHED Compliance History Report for CN604288407, RN106643950, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator:	CN604288407, William R. Rutherford	Classification:	SATISFACTORY	Rating:	12.00	
Regulated Entity:	RN106643950, BELL COUNTY PID 101746	Classification:	SATISFACTORY	Rating:	12.00	
Complexity Points:	0	Repeat Violator:	NO			
CH Group:	14 - Other					
Location:	Property on the east side of Cowan Road about 1 mile past the intersection with Buckhorn Cemetery Road, Moody, TX, Bell County					
TCEQ Region:	REGION 09 - WACO					
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R09106643950					
Compliance History Period:	September 01, 2008 to August 31, 2013	Rating Year:	2013	Rating Date:	09/01/2013	
Date Compliance History Report Prepared:	June 10, 2014					
Agency Decision Requiring Compliance History:	Enforcement					
Component Period Selected:	January 13, 2009 to January 13, 2014					
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.						
Name:	Danielle Porras				Phone:	(713) 767-3682

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:

N/A

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.

1 Date: 05/21/2013 (1075968)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THSC Chapter 382 382.085(b)

Description: Failed to prohibit the burning of MSW for the purpose of disposal

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)

Description: Failed to prevent the unauthorized disposal of MSW

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.60(a)

Description: Failed to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in lockable containers.

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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Compliance History Report

PUBLISHED Compliance History Report for CN604312363, RN106643950, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator:	CN604312363, Edina Bendure	Classification: SATISFACTORY	Rating: 12.00
Regulated Entity:	RN106643950, BELL COUNTY PID 101746	Classification: SATISFACTORY	Rating: 12.00
Complexity Points:	0	Repeat Violator: NO	
CH Group:	14 - Other		
Location:	Property on the east side of Cowan Road about 1 mile past the intersection with Buckhorn Cemetery Road, Moody, TX, Bell County		
TCEQ Region:	REGION 09 - WACO		
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R09106643950		
Compliance History Period:	September 01, 2008 to August 31, 2013	Rating Year: 2013	Rating Date: 09/01/2013
Date Compliance History Report Prepared:	June 10, 2014		
Agency Decision Requiring Compliance History:	Enforcement		
Component Period Selected:	January 13, 2009 to January 13, 2014		
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.			
Name:	Danielle Porras		Phone: (713) 767-3682

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:

N/A

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.

1 Date: 05/21/2013 (1075968)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THSC Chapter 382 382.085(b)

Description: Failed to prohibit the burning of MSW for the purpose of disposal

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)

Description: Failed to prevent the unauthorized disposal of MSW

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.60(a)

Description: Failed to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in lockable containers.

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
THOMAS E. RUTHERFORD,
WILLIAM R. RUTHERFORD,
AND EDINA BENDURE;
RN106643950**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2014-0053-MLM-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 361, and 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondents. The respondents made the subject of this Order are Thomas E. Rutherford, William R. Rutherford, and Edina Bendure ("Respondents").

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

FINDINGS OF FACT

1. On the dates the violations occurred, Respondents Thomas E. Rutherford and Edina Bendure owned and Respondent William R. Rutherford resided on property located on the east side of Cowan Road about one mile past the intersection with Buckhorn Cemetery Road in Moody, Bell County, Texas (the "Site"). The Site involves the management and/or disposal of municipal solid waste ("MSW") and used tires 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 March 22, 2013, and a record review conducted on November 19, 2013, an investigator documented that Respondents:
 - a. Failed to prohibit the burning of MSW for the purpose of disposal. Specifically, approximately 150 tires (15 cubic yards) and ten cubic yards of MSW were burned at the Site without authorization;
 - b. Failed to prevent unauthorized disposal of MSW. Specifically, approximately 20 cubic yards of paint cans, kerosene cans, foam, furniture, a riding lawnmower, treated lumber, rusty appliances, and bed frames were disposed of at the Site; and
 - c. Failed to obtain a scrap tire storage site registration for the Site prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in lockable containers. Specifically, there were approximately 1,200 scrap tires (120 cubic yards) being stored on the ground at the Site.
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 Thomas E. Rutherford, William R. Rutherford, and Edina Bendure" (the "EDPRP") in the TCEQ Chief Clerk's office on May 28, 2015.

4. By letter dated May 28, 2015, sent to each Respondents' last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served each Respondent with notice of the EDPRP. According to the return receipt "green cards," Thomas E. Rutherford received notice of the EDPRP on June 15, 2015, William R. Rutherford received notice of the EDPRP on June 10, 2015, and Edina Bendure received notice of the EDPRP on May 29, 2015, as evidenced by the signatures on the cards.
5. More than 20 days have elapsed since each Respondent received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.
6. The Executive Director recognizes that Respondent Edina Bendure no longer owns the Site as of January 13, 2014.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are 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., Respondents failed to prohibit the burning of MSW for the purpose of disposal, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 111.201.
3. As evidenced by Finding of Fact No. 2.b., Respondents failed to prevent unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
4. As evidenced by Finding of Fact No. 2.c., Respondents failed to obtain a scrap tire storage site registration for the Site prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in lockable containers, in violation of 30 TEX. ADMIN. CODE § 328.60(a).
5. As evidenced by Findings of Fact Nos. 3 and 4, the Executive Director timely served each Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
6. As evidenced by Finding of Fact No. 5, Respondents failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents 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.
8. An administrative penalty in the amount of sixteen thousand one hundred twenty-nine dollars (\$16,129.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. 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. Respondents are assessed an administrative penalty in the amount of sixteen thousand one hundred twenty-nine dollars (\$16,129.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondents' compliance with all the 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.
2. The 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 TCEQ and shall be sent with the notation "Re: Thomas E. Rutherford, William R. Rutherford, and Edina Bendure; Docket No. 2014-0053-MLM-E" to:

Financial Administration Division, Revenue Operations Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, TX 78711-3088

3. Respondents shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, cease burning and disposing of any additional MSW at the Site.
 - b. Within 30 days after the effective date of this Order, remove all MSW from the Site and dispose of it at an authorized facility.
 - c. Within 45 days after the effective date of this Order, either obtain a scrap tire storage registration for the Site or remove all of the scrap tires from the Site and dispose of them an authorized facility.
 - d. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provisions No. 3.a. through 3.c. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondents, 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."

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

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

and:

Waste Section Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Ave, Suite 2500
Waco, TX 76710-7826

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents.
6. 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive 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.
7. 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 Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
8. 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.
9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

AFFIDAVIT OF JACQUELYN BOUTWELL

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Jacquelyn Boutwell. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Thomas E. Rutherford, William R. Rutherford, and Edina Bendure" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on May 28, 2015.

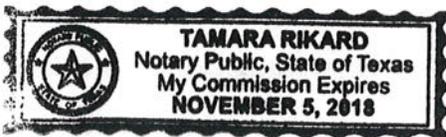
The EDPRP was mailed to each Respondents' last known address on May 28, 2015, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green cards," Thomas E. Rutherford received notice of the EDPRP on June 15, 2015, William R. Rutherford received notice of the EDPRP on June 10, 2015, and Edina Bendure received notice of the EDPRP on May 29, 2015, as evidenced by the signatures on the cards.

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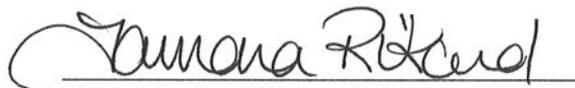

Jacquelyn Boutwell, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jacquelyn Boutwell, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Subscribed and sworn to before me on this 18 day of September, A.D. 2015.



Notary without Bond


Notary Public, State of Texas