

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 48590
Liborio Garcia and EXPERT CONSTRUCTION, INC.
RN106957889
Docket No. 2014-0581-MLM-E

Order Type:

Default Order (SOAH preliminary hearing)

Media:

MLM: APO, MSW, Used Oil, and WQ

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

approximately 8.5 miles south of the intersection of Conley Drive and United States Highway 62/180 and approximately .25 miles east of Conley Drive, El Paso County

Type of Operation:

aggregate production operation

Other Significant Matters:

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

Texas Register Publication Date: November 6, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: \$9,724

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$9,724

Compliance History Classifications:

Person/CN –N/A (Both Respondents)
Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: \$4,475 (enhancement-PCW 2)

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: October 9, 2013 and February 28, 2014
Date(s) of NOV(s): December 2, 2013
Date(s) of NOE(s): April 18, 2014

Violation Information

1. Failed to prevent the unauthorized disposal of municipal solid waste ("MSW") [30 TEX. ADMIN. CODE § 330.15(c)].
2. Failed to obtain authorization to discharge storm water associated with industrial activities [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c)].
3. Failed to register the Site as an aggregate production operation ("APO") [30 TEX. ADMIN. CODE § 342.25].
4. Failed to perform response action upon detection of a release of used oil [TEX. HEALTH & SAFETY CODE § 371.041, 40 C.F.R. § 279.22(d), and 30 TEX. ADMIN. CODE §§ 324.6 and 324.15].
5. Failed to label or clearly mark used oil containers with the words "Used Oil," [40 C.F.R. § 279.22(c)(1) and 30 TEX. ADMIN. CODE § 324.6].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
None

Technical Requirements:

1. Immediately cease disposing additional MSW and/or used oil at the Site (Violation Nos. 1 and 4).
2. Within 30 days:
 - a. Submit a report demonstrating the applicability of the Texas Risk Reduction Program ("TRRP"). If response actions are necessary, comply with all applicable requirements of TRRP;
 - b. Remove all soil impacted by releases and properly dispose of it at an authorized facility (Violation No. 4);
 - c. Label or clearly mark all containers of used oil with the words "Used Oil," (Violation No. 5);
 - d. Remove all MSW from the Site and dispose of it at an authorized facility (Violation No. 1);
 - e. Develop and implement a Storm Water Pollution Prevention Plan ("SWP3") (Violation No. 2);
 - f. Submit an administratively complete Notice of Intent to discharge storm water, along with associated fees (Violation No. 2); and
 - g. Submit an administratively complete application to register the Site as an APO, along with associated fees (Violation No. 3).
3. Within 45 days, submit written certification to demonstrate either that authorizations to operate an APO and discharge storm water from the Site have been obtained, or that operations have ceased until such time that appropriate authorizations are obtained (Violation Nos. 2 and 3).
4. Within 60 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1 and 2.a. through 2.d.

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 48590
Liborio Garcia and EXPERT CONSTRUCTION, INC.
RN106957889
Docket No. 2014-0581-MLM-E

Litigation Information

Date Petition(s) Filed: February 2, 2015 (EDPRP)
June 10, 2015 and June 19, 2015 (EDFARP)

Date Green Card(s) Signed: February 5, 2015 (EDPRP); Unclaimed (Both EDFARPs)

Date Answer(s) Filed: February 26, 2015

SOAH Referral Date: May 18, 2015

Hearing Date(s):
Preliminary hearing: July 2, 2015 (defaulted)

Contact Information

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

TCEQ Enforcement Coordinator: Abigail Lindsey, Enforcement Division, (512) 239-2576

TCEQ Regional Contact: Kent Waggoner, P.G., El Paso Regional Office, (915) 834-4949

Respondent Contact: Liborio Garcia, President, EXPERT CONSTRUCTION, INC., P.O. Box 8081,
Las Cruces, New Mexico 88006

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	22-Apr-2014		
	PCW	6-May-2015	Screening	23-Apr-2014
			EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Liborio Garcia and EXPERT CONSTRUCTION, INC.		
Reg. Ent. Ref. No.	RN106957889		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	48590	No. of Violations	2
Docket No.	2014-0581-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Water Quality	Enf. Coordinator	Mike Pace
Multi-Media	Used Oil	EC's Team	Enforcement Team 6
Multi-Media	Aggregate Production Operation		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,750
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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	\$187
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Notes	Enhancement for 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	\$161	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	#NAME?	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,937
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$3,937
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,937
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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	\$3,937
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Screening Date 23-Apr-2014 **Docket No.** 2014-0581-MLM-E
 Liborio Garcia and EXPERT CONSTRUCTION, INC.

PCW

Respondent Case ID No. 48590
Reg. Ent. Reference No. RN106957889
Media [Statute] Municipal Solid Waste
Enf. Coordinator Mike Pace

Policy Revision 4 (April 2014)
 PCW Revision March 26, 2014

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 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) 5%

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

N/A

Adjustment Percentage (Subtotal 3) 0%

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

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with same/similar violations.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 5%

Screening Date	23-Apr-2014	Docket No.	2014-0581-MLM-E	PCW
Respondent	Liborio Garcia and EXPERT CONSTRUCTION, INC.			
Case ID No.	48590	<i>Policy Revision 4 (April 2014)</i>		
Reg. Ent. Reference No.	RN106957889	<i>PCW Revision March 26, 2014</i>		
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Mike Pace			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 330.15(c)			
Violation Description	Failed to prevent the unauthorized disposal of Municipal Solid Waste ("MSW"). Specifically, Respondents disposed of approximately 140 cubic yards of MSW consisting of trash, off-road tires, wood pieces, and plastics.			
Base Penalty	\$25,000			

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Major	Moderate	Minor		
Release					
Actual			x	Percent	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 which 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	1	Number of violation days	54	Violation Base Penalty	\$1,250
<i>mark only one with an x</i>	daily				
	weekly				
	monthly				
	quarterly	x			
	semiannual				
	annual				
single event					
One quarterly event is recommended from the February 28, 2014 investigation to the April 23, 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	\$1,250		

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$69	Violation Final Penalty Total \$1,313
This violation Final Assessed Penalty (adjusted for limits) \$1,313	

Economic Benefit Worksheet

Respondent Liborio Garcia and EXPERT CONSTRUCTION, INC.
Case ID No. 48590
Reg. Ent. Reference No. RN106957889
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$1,893	28-Feb-2014	22-Nov-2014	0.73	\$69	n/a	\$69
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 all MSW from the Site and dispose of it at an authorized facility. The date required is the investigation date, and the final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,893

TOTAL \$69

Screening Date	23-Apr-2014	Docket No.	2014-0581-MLM-E	PCW
Respondent	Liborio Garcia and EXPERT CONSTRUCTION, INC.			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	48590			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN106957889			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Mike Pace			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)			
Violation Description	Failed to obtain authorization to discharge storm water associated with industrial activities. Specifically, Respondents did not develop and implement a Storm Water Pollution Prevention Plan ("SWP3") and obtain authorization under Texas Pollutant Discharge Elimination System Multi-Sector General Permit No. TXR050000.			
		Base Penalty		\$25,000

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent 0.0%
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events: 2 54 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

Two monthly events are recommended from the February 28, 2014 investigation to the April 23, 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 \$2,500

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount: \$91	Violation Final Penalty Total: \$2,625
This violation Final Assessed Penalty (adjusted for limits): \$2,625	

Economic Benefit Worksheet

Respondent Liborio Garcia and EXPERT CONSTRUCTION, INC.
Case ID No. 48590
Reg. Ent. Reference No. RN106957889
Media Municipal Solid Waste
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			0.00	\$0	n/a	\$0
Permit Costs	\$2,500	28-Feb-2014	22-Nov-2014	0.73	\$91	\$91
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost to develop and implement a SWP3 and submit a Notice of Intent. The date required is the investigation date, and the final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$2,500 **TOTAL** \$91



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	22-Apr-2014			
	PCW	6-May-2015	Screening	23-Apr-2014	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Liberio Garcia and EXPERT CONSTRUCTION, INC.	
Reg. Ent. Ref. No.	RN106957889	
Facility/Site Region	6-El Paso	Major/Minor Source
		Minor

CASE INFORMATION

Enf./Case ID No.	48590	No. of Violations	1
Docket No.	2014-0581-MLM-E	Order Type	1660
Media Program(s)	Aggregate Production Operation	Government/Non-Profit	No
Multi-Media	Used Oil	Enf. Coordinator	Mike Pace
Multi-Media	Municipal Solid Waste	EC's Team	Enforcement Team 6
Multi-Media	Water Quality		
Admin. Penalty \$ Limit Minimum	\$5,000	Maximum	\$10,000
		Violation Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **\$500**

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* **\$25**

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

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

Notes: The Respondents do not meet the culpability criteria.

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

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

Total EB Amounts **\$25**
 Approx. Cost of Compliance **\$450**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 *Final Subtotal* **\$525**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$525**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **\$5,000**

Notes:

The final assessed penalty has been adjusted to meet the statutory requirements of Tex. Water Code § 28A.102.

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 **\$5,000**

Screening Date 23-Apr-2014

Docket No. 2014-0581-MLM-E

PCW

Respondent Liborio Garcia and EXPERT CONSTRUCTION, INC.

Case ID No. 48590

Reg. Ent. Reference No. RN106957889

Media [Statute] Aggregate Production Operation

Enf. Coordinator Mike Pace

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

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 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) 5%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 5%

Screening Date	23-Apr-2014	Docket No.	2014-0581-MLM-E	PCW
Respondent	Liborio Garcia and EXPERT CONSTRUCTION, INC.			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	48590			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN106957889			
Media [Statute]	Aggregate Production Operation			
Enf. Coordinator	Mike Pace			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 342.25			
Violation Description	Failed to register the Site as an aggregate production operation ("APO").			
Base Penalty	\$10,000.00			

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent 0.0%
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,500.00

\$500.00

Violation Events

Number of Violation Events: 1 54 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$500.00

One single event is recommended.

Good Faith Efforts to Comply 0.0% Reduction \$0.00

	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 \$500.00

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$25.21	Violation Final Penalty Total \$525.00
This violation Final Assessed Penalty (adjusted for limits) \$5,000.00	

Economic Benefit Worksheet

Respondent Liborio Garcia and EXPERT CONSTRUCTION, INC.
Case ID No. 48590
Reg. Ent. Reference No. RN106957889
Media Aggregate Production Operation
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$450	9-Oct-2013	22-Nov-2014	1.12	\$25	n/a	\$25
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to register as an APO. The date required is the initial investigation date, and the final date is the estimated compliance date.

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	\$25
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Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	22-Apr-2014	Screening	23-Apr-2014	EPA Due	
	PCW	6-May-2015				

RESPONDENT/FACILITY INFORMATION

Respondent	Liborio Garcia and EXPERT CONSTRUCTION, INC.		
Reg. Ent. Ref. No.	RN106957889		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	48590	No. of Violations	2	
Docket No.	2014-0581-MLM-E	Order Type	1660	
Media Program(s)	Used Oil	Government/Non-Profit	No	
Multi-Media	Water Quality	Enf. Coordinator	Mike Pace	
Multi-Media	Municipal Solid Waste	EC's Team	Enforcement Team 6	
Multi-Media	Aggregate Production Operation			
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

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**

Notes

Culpability **No** **0.0%** Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit **0.0%** Enhancement* **Subtotal 6**

Total EB Amounts	\$187
Approx. Cost of Compliance	\$5,100

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL **0.0%** Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 23-Apr-2014

Docket No. 2014-0581-MLM-E

PCW

Respondent Liborio Garcia and EXPERT CONSTRUCTION, INC.

Case ID No. 48590

Policy Revision 4 (April 2014)

Reg. Ent. Reference No. RN106957889

PCW Revision March 26, 2014

Media [Statute] Used Oil

Enf. Coordinator Mike Pace

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	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 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) 5%

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

N/A

Adjustment Percentage (Subtotal 3) 0%

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

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with same/similar violations.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 5%

Screening Date	23-Apr-2014	Docket No.	2014-0581-MLM-E	PCW
Respondent	Liberio Garcia and EXPERT CONSTRUCTION, INC.			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	48590			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN106957889			
Media [Statute]	Used Oil			
Enf. Coordinator	Mike Pace			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code §§ 324.6 and 324.15, Tex. Health & Safety Code § 371.041 and 40 Code of Federal Regulations § 279.22(d)			
Violation Description	Failed to perform response action upon detection of a release of used oil. Specifically, the investigator documented oil spills on the ground by the used oil containers and under the front-end loader.			
Base Penalty				\$5,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual			x	Percent 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 which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events: 1 54 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$250

One quarterly event is recommended from the February 28, 2014 investigation to the April 23, 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 \$250

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$183 Violation Final Penalty Total \$263

This violation Final Assessed Penalty (adjusted for limits) \$263

Economic Benefit Worksheet

Respondent Liborio Garcia and EXPERT CONSTRUCTION, INC.
Case ID No. 48590
Reg. Ent. Reference No. RN106957889
Media Used Oil
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	\$5,000	28-Feb-2014	22-Nov-2014	0.73	\$183	n/a	\$183
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to submit a report demonstrating the applicability of the Texas Risk Reduction Program ("TRRP") to the Executive Director for approval, and to comply with all applicable requirements of the TRRP. 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	\$5,000	TOTAL	\$183
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Screening Date	23-Apr-2014	Docket No.	2014-0581-MLM-E	PCW
Respondent	Liborio Garcia and EXPERT CONSTRUCTION, INC.			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	48590			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN106957889			
Media [Statute]	Used Oil			
Enf. Coordinator	Mike Pace			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 324.6 and 40 CFR § 279.22(c)(1)			
Violation Description	Failed to label or clearly mark used oil containers with the words "Used Oil". Specifically, eleven 5-gallon buckets and four 55-gallon drums of used oil were not labeled.			
		Base Penalty	\$5,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent 0.0%
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent 5.0%
Matrix Notes	100% of the rule requirement was not met.				
			Adjustment	\$4,750	

\$250

Violation Events

Number of Violation Events	2	54	Number of violation days
<i>mark only one with an x</i>	daily		Violation Base Penalty \$500
	weekly		
	monthly	x	
	quarterly		
	semiannual		
	annual		
	single event		
Two monthly events are recommended from the February 28, 2014 investigation to the April 23, 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	\$500

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$4	Violation Final Penalty Total \$525
This violation Final Assessed Penalty (adjusted for limits) \$525	

Economic Benefit Worksheet

Respondent Liborio Garcia and EXPERT CONSTRUCTION, INC.
Case ID No. 48590
Reg. Ent. Reference No. RN106957889
Media Used Oil
Violation No. 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)	\$100	28-Feb-2014	22-Nov-2014	0.73	\$4	n/a	\$4

Notes for DELAYED costs Estimated cost to label or clearly mark all containers of used oil with the words "Used Oil". The date required is the investigation date, and the final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$100	TOTAL	\$4
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Compliance History Report

PUBLISHED Compliance History Report for CN604811521, RN106957889, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN604811521, Garcia, Liborio

Classification: NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN106957889, Stone Del Milagro

Classification: NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A

Repeat Violator: N/A

CH Group: 14 - Other

Location: Traveling east on US 62/180 turn right at the intersection with Conely, travel south approximately 8.5 miles. Turn left on Beach Blvd, quarry is at the top of the mesa. El Paso, TX, El Paso County

TCEQ Region: REGION 06 - EL PASO

ID Number(s):

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: May 06, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 22, 2009 to April 22, 2014

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

Name: Mike Pace

Phone: (817) 588-5933

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? 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: 12/02/2013 (1123568)

- | | | | |
|--------------|--|-----------------|----------|
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 342, SubChapter B 342.25 | | |
| Description: | Failure to register as an aggregate production operation. Specifically, on October 09, 2013, limestone was being mined at the facility which, according to §342.1, is extracting aggregates from the earth. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 281, SubChapter A 281.25(a)(4) | | |
| Description: | Failure to obtain Stormwater Permit TXR050000. Specifically, the facility did not have either a stormwater permit or a No Exposure Certification. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 324, SubChapter A 324.6
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22 | | |
| Description: | Failure to prevent the storage of used oil in any manner that endangers the public health or welfare of the environment. Specifically, it was noted during the investigation that used oil containers were uncovered and that oil had leaked from the containers onto the surrounding soil. The containers were also not properly labeled. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 330, SubChapter A 330.15 | | |
| Description: | Failure to prevent storage of municipal solid waste that causes endangerment of the environment. Specifically, approximately 140 cubic yards of municipal solid waste as trash, off-road tires, wood pieces, plastics was stored in various locations of the property. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 2D TWC Chapter 26, SubChapter A 26.121(a)(1) | | |
| Description: | Failure to prevent the discharge of industrial waste into or adjacent to any water in the state. Specifically, petroleum products and used oil were discharging onto the soil. | | |

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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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 CN604397323, RN106957889, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN604397323, EXPERT CONSTRUCTION, INC. **Classification:** N/A **Rating:** N/A

Regulated Entity: RN106957889, Stone Del Milagro **Classification:** N/A **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: Traveling east on US 62/180 turn right at the intersection with Conely, travel south approximately 8.5 miles. Turn left on Beach Blvd, quarry is at the top of the mesa. El Paso, TX, El Paso County

TCEQ Region: REGION 06 - EL PASO

ID Number(s):

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: May 06, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 22, 2009 to April 22, 2014

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

Name: Mike Pace

Phone: (817) 588-5933

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? 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: 12/02/2013 (1123568)

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 342, SubChapter B 342.25		
Description:	Failure to register as an aggregate production operation. Specifically, on October 09, 2013, limestone was being mined at the facility which, according to §342.1, is extracting aggregates from the earth.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)		
Description:	Failure to obtain Stormwater Permit TXR050000. Specifically, the facility did not have either a stormwater permit or a No Exposure Certification.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 324, SubChapter A 324.6 40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22		
Description:	Failure to prevent the storage of used oil in any manner that endangers the public health or welfare of the environment. Specifically, it was noted during the investigation that used oil containers were uncovered and that oil had leaked from the containers onto the surrounding soil. The containers were also not properly labeled.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 330, SubChapter A 330.15		
Description:	Failure to prevent storage of municipal solid waste that causes endangerment of the environment. Specifically, approximately 140 cubic yards of municipal solid waste as trash, off-road tires, wood pieces, plastics was stored in various locations of the property.		
Self Report?	NO	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)(1)		
Description:	Failure to prevent the discharge of industrial waste into or adjacent to any water in the state. Specifically, petroleum products and used oil were discharging onto the soil.		

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LIBORIO GARCIA AND
EXPERT CONSTRUCTION, INC.;
RN106957889**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2014-0581-MLM-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition, filed pursuant to TEX. WATER CODE chs. 7, 26, and 28A, TEX. HEALTH & SAFETY CODE chs. 361 and 371, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of respondents. Respondents made the subject of this Order are Liborio Garcia and EXPERT CONSTRUCTION, INC. (collectively "Respondents").

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

FINDINGS OF FACT

1. Respondents are each a responsible party as defined in TEX. WATER CODE § 28A.001(6). Liborio Garcia is an owner and operator, as defined in TEX. WATER CODE § 28A.001(4) and (5), and EXPERT CONSTRUCTION, INC. is an operator, as defined in TEX. WATER CODE § 28A.001(4) of an aggregate production operation located approximately 8.5 miles south of the intersection of Conley Drive and United States Highway 62/180 and approximately .25 miles east of Conley Drive in El Paso County, Texas (the "Site").¹ Aggregates are being or have been removed or extracted from the Site's earth. Therefore, the Site is an aggregate production operation ("APO") as defined in TEX. WATER CODE § 28A.001(1). The Site contains and/or involves the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Site involves the management of used oil as defined in TEX. HEALTH & SAFETY CODE ch. 371. The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During investigations conducted on October 9, 2013, and February 28, 2014, an investigator documented that Respondents:
 - a. Failed to prevent the unauthorized disposal of MSW. Specifically, Respondents disposed of approximately 140 cubic yards of MSW consisting of trash, off-road tires, wood pieces, and plastics;
 - b. Failed to obtain authorization to discharge storm water associated with industrial activities. Specifically, Respondents did not develop and implement a Storm Water Pollution Prevention Plan ("SWP3") and obtain authorization under Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit No. TXR05000;
 - c. Failed to register the Site as an APO;

¹ The legal description of the realty on which the Site is located is "77 TSP 3 SEC 14 T & P ABST 9834." The Global Positioning System coordinates of the center of the Site are 31.730465 and -106.015739.

- d. Failed to perform response action upon detection of a release of used oil. Specifically, oil spills were on the ground by the used oil containers and under a front-end loader; and
 - e. Failed to label or clearly mark used oil containers with the words "Used Oil". Specifically, eleven 5-gallon buckets and four 55-gallon drums of used oil were not labeled.
3. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of EXPERT CONSTRUCTION, INC. d/b/a Stone Del Milagro² (the "EDPRP") in the TCEQ Chief Clerk's office on February 2, 2015.
 4. EXPERT CONSTRUCTION, INC. filed an answer requesting a hearing on February 26, 2015, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on May 18, 2015.
 5. On June 2, 2015, the TCEQ Chief Clerk mailed notice of the July 2, 2015, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to EXPERT CONSTRUCTION, INC.
 6. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Liborio Garcia and EXPERT CONSTRUCTION, INC. (the "EDFARP") in the TCEQ Chief Clerk's office on June 10, 2015.
 7. The EDFARP was mailed to each Respondent's last known address on June 10, 2015, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDFARP sent by certified mail as "unclaimed".
 8. The Executive Director re-filed the EDFARP in the TCEQ Chief Clerk's office on June 19, 2015.
 9. By letter dated June 19, 2015, sent to each Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served each Respondent with notice of the EDFARP³. The United States Postal Service returned the EDFARP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondents received notice of the EDFARP.
 10. On July 2, 2015, the Administrative Law Judge ("ALJ") convened the preliminary hearing. EXPERT CONSTRUCTION, INC. failed to appear, and the Executive Director requested the ALJ enter a finding that EXPERT CONSTRUCTION, INC. was served with proper notice of the hearing and the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.
 11. On July 22, 2015, the ALJ entered a finding that EXPERT CONSTRUCTION, INC. was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No. 1 so that TCEQ may dispose of this case on a default basis.
 12. More than 20 days have elapsed since Respondents received notice of the EDFARP. Respondents failed to file an answer or request a hearing for the EDFARP.

² Respondent Liborio Garcia is the President, Director, and sole officer for EXPERT CONSTRUCTION, INC., a New Mexico corporation.

³ Liborio Garcia was served individually and in his capacity as Registered Agent and President of EXPERT CONSTRUCTION, INC.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 26 and 28A, TEX. HEALTH & SAFETY CODE chs. 361 and 371, and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondents failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Finding of Fact No. 2.b., Respondents failed to obtain authorization to discharge storm water associated with industrial activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c).
4. As evidenced by Finding of Fact No. 2.c., Respondents failed to register the Site as an APO, in violation of 30 TEX. ADMIN. CODE § 342.25.
5. As evidenced by Finding of Fact No. 2.d., Respondents failed to perform response action upon detection of a release of used oil, in violation of TEX. HEALTH & SAFETY CODE § 371.041, 40 C.F.R. § 279.22(d), and 30 TEX. ADMIN. CODE §§ 324.6 and 324.15.
6. As evidenced by Finding of Fact No. 2.e., Respondents failed to label or clearly mark used oil containers with the words "Used Oil," in violation of 40 C.F.R. § 279.22(c)(1) and 30 TEX. ADMIN. CODE § 324.6.
7. As evidenced by Finding of Fact No. 4, EXPERT CONSTRUCTION, INC. filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
8. As evidenced by Finding of Fact No. 5, EXPERT CONSTRUCTION, INC. was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.
9. As evidenced by Findings of Fact Nos. 10 and 11, EXPERT CONSTRUCTION, INC. failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4) and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against EXPERT CONSTRUCTION, INC. and assess the penalty recommended by the Executive Director pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106(b).
10. As evidenced by Findings of Fact Nos. 6 through 9, the Executive Director timely served each Respondent with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
11. As evidenced by Finding of Fact No. 12, Respondents failed to file a timely answer to the EDFARP 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.
12. 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.

13. An administrative penalty in the amount of nine thousand seven hundred twenty-four dollars (\$9,724.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
14. 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 nine thousand seven hundred twenty-four dollars (\$9,724.00) 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: Liborio Garcia and EXPERT CONSTRUCTION, INC.; Docket No. 2014-0581-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, Texas 78711-3088

3. Respondents shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Respondents shall cease disposing additional MSW and/or used oil at the Site (Conclusions of Law Nos. 2 and 5).
 - b. Within 30 days after the effective date of this Order:
 - i. Submit a report demonstrating the applicability of the Texas Risk Reduction Program ("TRRP"), pursuant to 30 TEX. ADMIN. CODE ch. 350, to the Executive Director for approval. If response actions are necessary, comply with all applicable requirements of TRRP which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(1)); and Institutional Controls under Subchapter F (Conclusion of Law No. 5). The report shall be submitted to:

Corrective Action Section
Remediation Division, MC 221
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - ii. Remove all soil impacted by releases and properly dispose of it at an authorized facility (Conclusion of Law No. 5);
 - iii. Label or clearly mark all containers of used oil with the words "Used Oil," in accordance with 30 TEX. ADMIN. CODE § 324.6 and 40 C.F.R. 279.22(c)(1) (Conclusion of Law No. 6);

- iv. Remove all MSW from the Site and dispose of it at an authorized facility (Conclusion of Law No. 2);
- v. Develop and implement a SWP3, in accordance with TPDES Multi-Sector General Permit No. TXR05000 and 30 TEX. ADMIN. CODE § 281.25 (Conclusion of Law No. 3);
- vi. Submit an administratively complete Notice of Intent to discharge storm water (Conclusion of Law No. 3) along with associated fees to:

Wastewater Permitting Section
Water Quality Division, MC 148
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Respondents shall respond completely and adequately, as determined by TCEQ, to any requests for additional information concerning the Notice of Intent and address any deficiencies identified by the Wastewater Permitting Section within 30 days of such request or by any other deadline specified in writing by the TCEQ; and

- vii. Submit an administratively complete application to register the Site as an APO (Conclusion of Law No. 4), along with associated fees, in accordance with 30 TEX. ADMIN. CODE § 342.25, to:

Application Review and Processing Team
Water Quality Division, MC 148
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Respondents shall respond completely and adequately, as determined by TCEQ, to any requests for additional information concerning the APO registration and address any deficiencies identified by the Application Review and Processing Team within 30 days of such request or by any other deadline specified in writing by the TCEQ.

- c. Within 45 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 3.e, to demonstrate either that authorizations to operate an APO and discharge storm water from the Site have been obtained, or that operations have ceased until such time that appropriate authorizations are obtained (Conclusions of Law Nos. 3 and 4).
- d. Within 60 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 3.e, to demonstrate compliance with Ordering Provision Nos. 3.a. through 3.b.iv.
- e. 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 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 certifications 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:

Water and Waste Section Managers
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1212

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. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
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. If Respondents fail 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, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

AFFIDAVIT OF JOEL CORDERO

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

"My name is Joel Cordero. 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.

The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of EXPERT CONSTRUCTION, INC. d/b/a Stone Del Milagro (the "EDPRP") in the TCEQ Chief Clerk's office on February 2, 2015.

EXPERT CONSTRUCTION, INC. filed an answer requesting a hearing on February 26, 2015, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on May 18, 2015.

On June 2, 2015, the TCEQ Chief Clerk mailed notice of the July 2, 2015, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to EXPERT CONSTRUCTION, INC.

The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Liborio Garcia and EXPERT CONSTRUCTION, INC." (the "EDFARP") was filed in the TCEQ Chief Clerk's office on June 10, 2015.

The EDFARP was mailed to each Respondent's last known address on June 10, 2015, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDFARP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDFARP was re-filed in the TCEQ Chief Clerk's office on June 19, 2015.

The EDFARP was mailed to each Respondent's last known address on June 19, 2015, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDFARP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondents received notice of the EDFARP in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

On July 2, 2015, the Administrative Law Judge ("ALJ") convened the preliminary hearing. EXPERT CONSTRUCTION, INC. failed to appear and the Executive Director requested that the ALJ enter a finding that EXPERT CONSTRUCTION, INC. was served with proper notice of the hearing and the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.

On July 22, 2015, the ALJ entered a finding that EXPERT CONSTRUCTION, INC. was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No. 1 so that TCEQ may dispose of this case on a default basis.

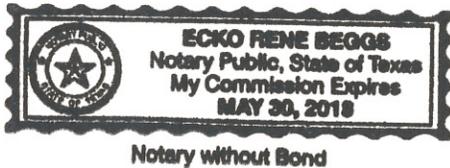
More than 20 days have elapsed since Respondents received notice of the EDFARP. Respondents failed to file an answer or request a hearing for the EDFARP."

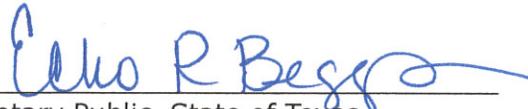


Joel Cordero, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Subscribed and sworn to before me on this 21st day of October, A.D. 2015.





Notary Public, State of Texas