

the shingle yard LLC
RN101559912
Docket No. 2014-1644-MLM-E

Order Type:

Default Order (SOAH preliminary hearing)

Media:

MLM: MSW and WO

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

4601 West Highway 56, Sherman, Grayson County

Type of Operation:

shingle recycling facility

Other Significant Matters:

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

Texas Register Publication Date:	November 20, 2015
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Comments Received:	None
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Penalty Information

Total Penalty Assessed:	\$61,830
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Total Paid to General Revenue:	\$0
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Total Due to General Revenue:	\$61,830
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Compliance History Classifications:

Person/CN – Unclassified
Site/RN – Unclassified

Major Source:	No
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Statutory Limit Adjustment:	None
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Applicable Penalty Policy:	April 2014
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the shingle yard LLC
RN101559912
Docket No. 2014-1644-MLM-E

Investigation Information

Complaint Date(s): August 1, 2014
Complaint Information: Alleged that Respondent abandoned the facility and left thousands of tons of shingles on-site.

Date(s) of Investigation: August 27, 2014

Date(s) of NOV(s): N/A

Date(s) of NOE(s): November 4, 2014

Violation Information

1. Failed to provide financial assurance for the closure of a recycling facility that stores combustible material outdoors [30 TEX. ADMIN. CODE § 328.5(d) and (f)(3)].
2. Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste (“MSW”) (approximately 12,191 cubic yards of shingles and pallets) [30 TEX. ADMIN. CODE § 330.15(a) and (c)].
3. Failed to have a Fire Prevention and Suppression Plan [30 TEX. ADMIN. CODE § 328.5(h)].
4. Failed to maintain the required recycling records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 328.5(f)(1) and (g)].
5. Failed to obtain authorization to discharge storm water associated with industrial activities under the Texas Pollution Discharge Elimination System Multi-Sector General Permit No. TXR050000 [40 C.F.R. § 122.26(c) and 30 TEX. ADMIN. CODE § 281.25(a)(4)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
None

Technical Requirements:

1. Immediately:
 - a. Cease disposing of any additional MSW at the Facility; and
 - b. Begin maintaining all recycling records and ensure they are made immediately available for inspection upon request by agency personnel.
2. Within 30 days:
 - a. Either remove all MSW from the Facility and dispose of it at an authorized facility; or
 - b. Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility;
 - c. Prepare and submit a Fire Prevention and Suppression Plan to the local fire prevention authority;
 - d. Develop and implement a Stormwater Pollution Prevention Plan; and
 - e. Submit a Notice of Intent and associated fees.
3. Within 45 days, submit written certification to demonstrate compliance.

the shingle yard LLC
RN101559912
Docket No. 2014-1644-MLM-E

Litigation Information

Date Petition(s) Filed: April 27, 2015 (EDPRP); June 23, 2015 (EDFARP)
Date Green Card(s) Signed: April 30, 2015 (EDPRP); July 3, 2015 (EDFARP)
Date Answer(s) Filed: May 20, 2015
SOAH Referral Date: June 22, 2015
Hearing Date(s):
Preliminary hearing: September 3, 2015 (defaulted)

Contact Information

TCEQ Attorneys: Jennifer Cook, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Holly Kneisley, Enforcement Division, (817) 588-5856
TCEQ Regional Contact: Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5800
Respondent Contact: Mariah Carter, Managing Member, the shingle yard LLC, 807 Darwin Road, Whitewright, Texas 75491
Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	3-Nov-2014	Screening	14-Nov-2014	EPA Due	
	PCW	11-Mar-2015				

RESPONDENT/FACILITY INFORMATION			
Respondent	the shingle yard LLC		
Reg. Ent. Ref. No.	RN101559912		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	49600	No. of Violations	5
Docket No.	2014-1644-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Water Quality	Enf. Coordinator	Holly Kneisley
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$43,750
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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	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for Compliance History.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	50.0% Enhancement*	Subtotal 6	\$18,080
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Total EB Amounts	\$18,080
Estimated Cost of Compliance	\$198,922

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$61,830
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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:

Final Penalty Amount	\$61,830
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$61,830
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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.

PAYABLE PENALTY	\$61,830
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Screening Date 14-Nov-2014

Docket No. 2014-1644-MLM-E

PCW

Respondent the shingle yard LLC

Policy Revision 4 (April 2014)

Case ID No. 49600

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101559912

Media [Statute] Municipal Solid Waste

Enf. Coordinator Holly Kneisley

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for Compliance History.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 14-Nov-2014 **Docket No.** 2014-1644-MLM-E **PCW**
Respondent the shingle yard LLC *Policy Revision 4 (April 2014)*
Case ID No. 49600 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN101559912
Media [Statute] Municipal Solid Waste
Enf. Coordinator Holly Kneisley

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 328.5(d) and 328.5(f)(3)

Violation Description

Failed to provide financial assurance for the closure of a recycling facility that stores combustible material outdoors. Specifically, financial assurance was not provided for approximately 12,191 cubic yards of municipal solid waste ("MSW").

Base Penalty \$25,000

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

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 4 1639 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$5,000

Four annual events are recommended for the period preceding the August 27, 2014 investigation.

Good Faith Efforts to Comply

0.0%

Reduction \$0

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

Notes

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

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$11,613

Violation Final Penalty Total \$8,616

This violation Final Assessed Penalty (adjusted for limits) \$8,616

Economic Benefit Worksheet

Respondent the shingle yard LLC
Case ID No. 49600
Reg. Ent. Reference No. RN101559912
Media Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				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]	\$9,210	10-May-2010	27-Aug-2014	5.22	\$2,403	\$9,210	\$11,613
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost of obtaining financial assurance for the closure of the Facility. The date required is the date operations began, and the final date is the investigation date.

Approx. Cost of Compliance

\$9,210

TOTAL

\$11,613

Screening Date 14-Nov-2014
Respondent the shingle yard LLC
Case ID No. 49600
Reg. Ent. Reference No. RN101559912
Media [Statute] Municipal Solid Waste
Enf. Coordinator Holly Kneisley

Docket No. 2014-1644-MLM-E

PCW

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

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 330.15(a) and (c)

Violation Description

The Respondent caused, suffered, allowed, or permitted the unauthorized collection, storage, processing or disposal of MSW. Specifically, the Respondent collected, stored, processed, or disposed of approximately 12,191 cubic yards of MSW consisting of shingles and pallets at the Facility.

Base Penalty

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

OR

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

Percent

>> **Programmatic Matrix**

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

Percent

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Three monthly events are recommended from the August 27, 2014 investigation to the November 4, 2014 screening date.

Good Faith Efforts to Comply

Reduction

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

Notes

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent the shingle yard LLC
Case ID No. 49600
Reg. Ent. Reference No. RN101559912
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	\$184,212	27-Aug-2014	3-May-2015	0.68	\$6,283	n/a	\$6,283
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 approximately 12,191 cubic yards of MSW from the Facility 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
 (Empty box for notes)

Approx. Cost of Compliance \$184,212 **TOTAL** \$6,283

Screening Date 14-Nov-2014
Respondent the shingle yard LLC
Case ID No. 49600
Reg. Ent. Reference No. RN101559912
Media [Statute] Municipal Solid Waste
Enf. Coordinator Holly Kneisley

Docket No. 2014-1644-MLM-E

PCW

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

Violation Number

Rule Cite(s)

Violation Description

Failed to have a Fire Prevention and Suppression Plan. Specifically, the Respondent had not made a Fire Prevention and Suppression Plan available to the local fire prevention authority having jurisdiction over the Facility for review and coordination.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

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

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

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

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Three monthly events are recommended from the August 27, 2014 investigation to the November 4, 2014 screening date.

Good Faith Efforts to Comply

Reduction

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

Notes

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent the shingle yard LLC
Case ID No. 49600
Reg. Ent. Reference No. RN101559912
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	\$2,500	27-Aug-2014	3-May-2015	0.68	\$85	n/a	\$85
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: Estimated cost to prepare and submit a Fire Prevention and Suppression plan to the local fire prevention authority. 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 \$85

Screening Date 14-Nov-2014
Respondent the shingle yard LLC
Case ID No. 49600
Reg. Ent. Reference No. RN101559912
Media [Statute] Municipal Solid Waste
Enf. Coordinator Holly Kneisley

Docket No. 2014-1644-MLM-E

PCW

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

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

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

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

>> **Programmatic Matrix**

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

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

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="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 the shingle yard LLC
Case ID No. 49600
Reg. Ent. Reference No. RN101559912
Media Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$1,000	27-Aug-2014	3-Apr-2015	0.60	\$30	n/a	\$30
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

Estimated cost to maintain recycling records. 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 \$1,000

TOTAL \$30

Screening Date 14-Nov-2014
Respondent the shingle yard LLC
Case ID No. 49600
Reg. Ent. Reference No. RN101559912
Media [Statute] Municipal Solid Waste
Enf. Coordinator Holly Kneisley

Docket No. 2014-1644-MLM-E

PCW

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

Violation Number 5

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 under the Texas Pollution Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") No. TXR050000.

Base Penalty \$25,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> **Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3 69 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

Three monthly events are recommended from the August 27, 2014 investigation to the November 4, 2014 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$68

Violation Final Penalty Total \$7,366

This violation Final Assessed Penalty (adjusted for limits) \$7,366

Economic Benefit Worksheet

Respondent the shingle yard LLC
Case ID No. 49600
Reg. Ent. Reference No. RN101559912
Media Municipal Solid Waste
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,000	27-Aug-2014	3-May-2015	0.68	\$68	n/a	\$68
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to obtain a TPDES MSGP permit to discharge storm water including developing and implementing a storm water pollution prevention plan. The date required is the investigation date, and the final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$2,000

TOTAL \$68

The TCEQ is committed to accessibility.

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



Compliance History Report

PUBLISHED Compliance History Report for CN603713538, RN101559912, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN603713538, the shingle yard LLC

Classification: UNCLASSIFIED

Rating: -----

Regulated Entity: RN101559912, The Shingle Yard

Classification: UNCLASSIFIED

Rating: -----

Complexity Points: 4

Repeat Violator: NO

CH Group: 14 - Other

Location: 4601 W STATE HIGHWAY 56 SHERMAN, TX 75092-6439, GRAYSON COUNTY

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s): MUNICIPAL SOLID WASTE PROCESSING PERMIT 100275
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R04101559912

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

Date Compliance History Report Prepared: November 17, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: November 03, 2009 to November 03, 2014

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

Name: Holly Kneisley

Phone: (817) 588-5856

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

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

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

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

N/A

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

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

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
THE SHINGLE YARD LLC;
RN101559912**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2014-1644-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 and 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is the shingle yard LLC ("Respondent").

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

FINDINGS OF FACT

1. Respondent operates a shingle recycling facility located at 4601 West Highway 56 in Sherman, Grayson County, Texas (the "Facility"). The Facility contains and/or involves the management of municipal solid waste ("MSW"), as defined in TEX. HEALTH & SAFETY CODE ch. 361, and is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During an investigation conducted on August 27, 2014, an investigator documented that Respondent:
 - a. Failed to provide financial assurance for the closure of a recycling facility that stores combustible material outdoors. Specifically, financial assurance was not provided for approximately 12,191 cubic yards of MSW;
 - b. Caused, suffered, allowed, or permitted the unauthorized disposal of MSW. Specifically, Respondent disposed of approximately 12,191 cubic yards of MSW consisting of shingles and pallets;
 - c. Failed to have a Fire Prevention and Suppression Plan. Specifically, Respondent had not made a Fire Prevention and Suppression Plan available to the local fire prevention authority having jurisdiction over the Facility for review and coordination;
 - d. Failed to maintain the required recycling records and make them immediately available for inspection upon request by agency personnel; and
 - e. Failed to obtain authorization to discharge storm water associated with industrial activities under the Texas Pollution Discharge Elimination System Multi-Sector General Permit No. TXR050000.
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 the shingle yard LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on April 27, 2015.

4. Respondent filed an answer requesting a hearing on May 20, 2015, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on June 22, 2015.
5. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of the shingle yard LLC and HALE SOUTHMAYD CORPORATION" (the "EDFARP") in the TCEQ Chief Clerk's office on June 23, 2015.
6. On August 4, 2015, the TCEQ Chief Clerk mailed notice of the September 3, 2015 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.
7. On September 3, 2015, the Administrative Law Judge ("ALJ") convened the preliminary hearing. Respondent failed to appear, and the Executive Director requested that the ALJ enter a finding that Respondent 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.
8. On September 9, 2015, the ALJ entered a finding that Respondent was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No. 1 so that TCEQ may dispose of this case on a default basis.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to provide financial assurance for the closure of a recycling facility that stores combustible material outdoors, in violation of 30 TEX. ADMIN. CODE § 328.5(d) and (f)(3).
3. As evidenced by Finding of Fact No. 2.b., Respondent caused, suffered, allowed, or permitted the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(a) and (c).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to have a Fire Prevention and Suppression Plan, in violation of 30 TEX. ADMIN. CODE § 328.5(h).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to maintain the required recycling records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 328.5(f)(1) and (g).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to obtain authorization to discharge storm water associated with industrial activities under the TPDES MSGP No. TXR050000, in violation of 40 C.F.R. § 122.26(c) and 30 TEX. ADMIN. CODE § 281.25(a)(4).
7. As evidenced by Finding of Fact No. 4, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
8. As evidenced by Finding of Fact No. 6, Respondent 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. 7 and 8, Respondent 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 Respondent and assess the penalty recommended by the Executive Director pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106(b).
10. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
11. An administrative penalty in the amount of sixty-one thousand eight hundred thirty dollars (\$61,830.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
12. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of sixty-one thousand eight hundred thirty dollars (\$61,830.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's 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: the shingle yard LLC; Docket No. 2014-1644-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. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order:
 - i. Cease disposing of any additional MSW at the Facility; and
 - ii. Begin maintaining all recycling records and ensure they are made immediately available for inspection upon request by agency personnel, in accordance with 30 TEX. ADMIN CODE § 328.5.
 - b. Within 30 days after the effective date of this Order, implement either Ordering Provision No. 3.b.i. or Ordering Provisions Nos. 3.b.ii. through 3.b.v.
 - i. Either remove all MSW from the Facility and dispose of it at an authorized facility; or

- ii. Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility, in accordance with 30 TEX. ADMIN. CODE § 328.5(d) to:

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

- iii. Prepare and submit a Fire Prevention and Suppression Plan to the local fire prevention authority, in accordance with 30 TEX. ADMIN. CODE § 328.5(f)(1) and (g);
- iv. Develop and implement a Stormwater Pollution Prevention Plan to comply with the requirements of TPDES General Permit No. TXR050000; and
- v. Submit a Notice of Intent and associated fees to:

Stormwater Processing Center, MC 228
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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:

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

- 4. All relief not expressly granted in this Order is denied.

5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this 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 JENNIFER COOK

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

"My name is Jennifer Cook. 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 the shingle yard LLC" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on April 27, 2015.

Respondent filed an answer requesting a hearing on May 20, 2015 and the matter was referred to the State Office of Administrative Hearings ("SOAH") on June 22, 2015.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, 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 the shingle yard LLC and HALE SOUTHMAYD CORPORATION" (the "EDFARP") was filed in the TCEQ Chief Clerk's office on June 23, 2015.

On August 4, 2015, the TCEQ Chief Clerk mailed notice of the September 3, 2015 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

Respondent failed to appear at the hearing on September 3, 2015. At that hearing, I requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the TCEQ for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

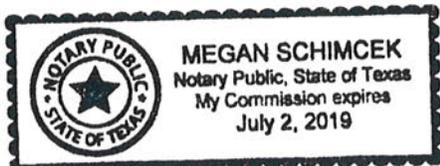
The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, issued on September 9, 2015, so that TCEQ may dispose of this case on a default basis."

Jennifer Cook, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jennifer Cook, 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 29th day of October, A.D. 2015.

Notary Public, State of Texas



Notary Without Bond