

SOAH DOCKET NO. 582-05-9439
TCEQ DOCKET NO. 2004-1649-MSW-E

TEXAS COMMISSION ON	§	BEFORE THE STATE OFFICE
ENVIRONMENTAL QUALITY,	§	
Petitioner	§	
 	§	
V.	§	OF
 	§	
TOUCHE INTERNATIONAL, INC.,	§	ADMINISTRATIVE HEARINGS
Respondent	§	

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) has concluded that Touche International, Inc. (Touche or Respondent) has violated TNRCC Default Order, Docket No. 2000-1311-MSW-E. The ED seeks to revoke Touche’s Scrap Tire Transporter Registration No. 27079 and Scrap Tire Processing Facility Registration No. 79557. The ED further recommends that Touche undertake such actions necessary to bring its operations into compliance with the Texas Health & Safety Code and TCEQ Rules.

After being properly notified, Touche failed to appear at the hearing on March 15, 2007, concerning the ED’s allegations and recommendation. Therefore, as set out below, the Administrative Law Judge (ALJ) recommends that the Commission enter a default judgment against Respondent, deem as true the facts alleged by the ED, revoke Touche’s Scrap Tire Transporter Registration No. 27079 and Scrap Tire Processing Facility Registration No. 79557, and require certain corrective actions by Respondent.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



DEFAULT ORDER
Revoking Registrations and
Ordering Corrective Action by
Touche International, Inc.;
TCEQ Docket No. 2004-1649-MSW-E
SOAH Docket No. 582-05-9439

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's First Amended Report and Petition recommending that the Commission enter an order revoking the Scrap Tire Transporter Registration No. 27079 and Scrap Tire Processing Facility Registration No. 79557 against and requiring corrective action by Touche International, Inc. (Touche or Respondent). A Proposal for Decision (PFD) was presented by Michael J. O'Malley, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the allegations on March 15, 2007, in Austin, Texas.

The Executive Director, represented by Jim Sallans, appeared at the hearing. The Respondent was not present at the hearing nor represented by counsel and did not file for a continuance. The Executive Director requested that a default judgement be entered against the Respondent. The ALJ agreed with the Executive Director's request.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Respondent owns and operates a scrap tire facility located seven miles north of Whitesboro, Texas, on Bristol Road, Grayson County, Texas (the Facility). The Facility involves the management and disposal of municipal solid waste.
2. On January 27, 2003, a TCEQ Central Office Investigator documented that Respondent violated TNRCC Default Order, Docket No. 2000-1311-MSW-E 9 (Default Order).
3. Respondent violated the Default Order by not paying an administrative penalty of \$11,600.00 and failing to comply with Ordering Provisions 2.a. through 2.f.
4. Respondent received notice of the violations on or about January 27, 2003.
5. On February 15, 2003, Respondent filed an answer and requested a hearing, and the matter was referred to SOAH for hearing on May 2, 2005.
6. On March 8, 2005, the Executive Director filed the Executive Director's First Amended Report and Petition, in accordance with TEX. WATER CODE ANN. § 7.054, TEX. HEALTH & SAFETY CODE ANN. ch. 361, AND 30 TEX. ADMIN. CODE chs. 70 and 328, seeking to revoke Respondent's Scrap Tire Transporter Registration No. 27079 and Scrap Tire Processing Facility Registration No. 79557. The ED further recommends that Touche undertake such actions necessary to bring its operations into compliance with the Texas Health & Safety Code and TCEQ Rules.
7. The Executive Director requests that Respondent:
 - Pay the \$11,600.00 administrative penalty assessed in TNRCC Default Order, Docket No. 2000-1311-MSW-E.
 - Cease to cause, suffer, allow, or permit any additional municipal solid waste, specifically used scrap tires and tire pieces, to be stored processed, or disposed of at the Facility, in accordance with 30 TEX. ADMIN. CODE § 330.5.

- Remove all equipment and structures associated with tire storage and processing from the Facility; and either
 - Properly remove, transport, using a transporter that is authorized in accordance with the requirements of 30 TEX. ADMIN. CODE § 328.57, and dispose of all used scrap tires from the Facility at an authorized disposal facility; or
 - Properly remove and transport, using a transporter that is authorized in accordance with the requirements of 30 TEX. ADMIN. CODE § 328.57, all used scrap tires to an authorized scrap tire facility.
8. On February 6, 2007, the Executive Director mailed the notice of hearing to Respondent's last known address.
9. On February 16, 2007, the Executive Director personally served James Glendening, President of Touche, with the notice of hearing.
10. The notice of hearing:
- Indicated the time, date, place, and nature of the hearing;
 - Stated the legal authority and jurisdiction for the hearing;
 - Indicated the statutes and rules the Executive Director alleged Respondent violated;
 - Referred to the First Amended Report and Petition, a copy of which was attached, which indicated the matters asserted by the Executive Director;
 - Advised Respondent, in at least 12-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by legal representative would result in the factual allegations contained in the notice being deemed as true and the relief sought in the notice possibly being granted by default.
11. On March 15, 2007, the ALJ convened the hearing on the merits. Respondent did not appear, nor did a representative of Respondent appear.
12. Based on Respondent's failure to appear at the hearing, the Executive Director moved for a default judgment against Respondent in which all of the Executive Director's allegations would be deemed admitted as true, the revocations the Executive Director seeks would be ordered, and Respondent would be ordered to take corrective action recommended by the Executive Director. The ALJ granted the motion.

II. CONCLUSIONS OF LAW

1. Under 30 TEX. ADMIN. CODE § 328.55, the Commission has authority to annul, suspend, or revoke a scrap tire transporter registration and a scrap tire processing facility registration for cause as provided for in 30 TEX. ADMIN. CODE § 328.55(6)(A)(vi).
2. Under TEX. WATER CODE ANN. § 7.073, the Commission is authorized to order corrective action if a person violates any statute or rule within the Commission's jurisdiction.
3. As required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondent was notified of the First Amended Report and Petition and of the opportunity to request a hearing on the alleged violations, the revocations, and corrective actions proposed therein.
4. As required by TEX. GOV'T CODE ANN. § 2001.052; TEX. WATER CODE ANN. § 7.058; 1 TEX. ADMIN. CODE § 155.27; and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalties. Additionally, Respondent was notified, in accordance with 1 TEX. ADMIN. CODE § 155.55, that if Respondent failed to appear at the hearing, a default judgment could be rendered against Respondent in which all the allegations contained in the notice of hearing would be deemed admitted as true.
5. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

6. Based on the above Findings of Fact and Conclusions of Law:
 - a. A default judgment should be entered against Respondent in accordance with 1 TEX. ADMIN. CODE § 155.55 and 30 TEX. ADMIN. CODE § 70.106(b); and
 - b. The allegations contained in the notice of the hearing, including those in the First Amended Report and Petition attached thereto, are admitted as true.
7. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 30 TEX. ADMIN. CODE § 328.55(6)(A)(vi) for failing to comply with a Commission Order.
8. Based on the above Findings of Fact and Conclusions of Law, Respondent's Scrap Tire Transporter Registration No. 27079 and Scrap Tire Processing Facility Registration No. 79557 should be revoked, and Respondent should be required to take the corrective action measures that the Executive Director recommends pursuant to TEX. WATER CODE ANN. § 7.073.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Touche's Scrap Tire Transporter Registration No. 27079 and Scrap Tire Processing Facility Registration No. 79557 are revoked.
2. Immediately after the effective date of the Commission Order, Touche shall:
 - Pay the \$11,600.00 administrative penalty assessed in TNRCC Default Order, Docket No. 2000-1311-MSW-E.
 - Cease to cause, suffer, allow, or permit any additional municipal solid waste, specifically used scrap tires and tire pieces, to be stored processed, or disposed of at the Facility, in accordance with 30 TEX. ADMIN. CODE § 330.5.

3. Within 60 days after the effective date of the Commission Order, Touche shall:
- Remove all equipment and structures associated with tire storage and processing from the Facility; and either
 - Properly remove, transport, using a transporter that is authorized in accordance with the requirements of 30 TEX. ADMIN. CODE § 328.57, and dispose of all used scrap tires from the Facility at an authorized disposal facility; or
 - Properly remove and transport, using a transporter that is authorized in accordance with the requirements of 30 TEX. ADMIN. CODE § 328.57, all used scrap tires to an authorized scrap tire facility.

4. Within 75 days after the effective date of the Commission Order, Touche shall provide certification of compliance with the corrective actions to:

Work Leader, Team 5, Section III, Enforcement Division, MC 149
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and a copy to:

Sam Barrett, Manager, Waste Section, Arlington Regional Office
Texas Commission on Environmental Quality
1101 East Arkansas Lane
Arlington, Texas 77010-6499

5. 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 Commission Order.
6. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

7. The effective date of this Commission Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
8. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Commission Order to Respondent.
9. If any provision, sentence, clause, or phrase of this Commission Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Kathleen Hartnett White, Chairman
For the Commission

II. JURISDICTION AND VIOLATIONS

Respondent owns and operates a scrap tire facility located seven miles north of Whitesboro, Texas, on Bristol Road, Grayson County, Texas (the Facility). The Facility involves the management and disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE, ch. 361. During an inspection conducted on January 27, 2003, a TCEQ Central Office Investigator documented that Touche violated TNRCC Default Order, Docket No. 2000-1311-MSW-E by:

- ◆ Failing to pay the assessed administrative penalty of \$11,600.00.
- ◆ Failing to comply with Ordering Provisions 2.a. through 2.f. (a copy of TNRCC Default Order, Docket No. 2000-1311-MSW-E is attached to this proposal for decision).

Touche received notice of the violations on or about January 27, 2003.

Under 30 TEX. ADMIN. CODE § 328.55, the Commission has authority to annul, suspend, or revoke a scrap tire transporter registration and a scrap tire processing facility registration for cause as provided for in 30 TEX. ADMIN. CODE § 328.55(6)(A). The ED recommends revocation based on Touche's failure to comply with an Order issued by the Commission. 30 TEX. ADMIN. CODE § 328.55(6)(A)(vi).

Under TEX. WATER CODE ANN. § 7.073, the Commission is authorized to order corrective action if a person violates any statute or rule within the Commission's jurisdiction. The ED recommends that Touche take the following corrective action:

Immediately after the effective date of the Commission Order, Touche shall:

- ◆ Pay the \$11,600.00 administrative penalty assessed in TNRCC Default Order, Docket No. 2000-1311-MSW-E.

- ◆ Cease to cause, suffer, allow, or permit any additional municipal solid waste, specifically used scrap tires and tire pieces, to be stored processed, or disposed of at the Facility, in accordance with 30 TEX. ADMIN. CODE § 330.5.

Within 60 days after the effective date of the Commission Order, Touche shall:

- ◆ Remove all equipment and structures associated with tire storage and processing from the Facility; and either
- ◆ Properly remove, transport, using a transporter that is authorized in accordance with the requirements of 30 TEX. ADMIN. CODE § 328.57, and dispose of all used scrap tires from the Facility at an authorized disposal facility; or
- ◆ Properly remove and transport, using a transporter that is authorized in accordance with the requirements of 30 TEX. ADMIN. CODE § 328.57, all used scrap tires to an authorized scrap tire facility.

Within 75 days after the effective date of the Commission Order, Touche shall provide certification of compliance with the corrective actions to:

Work Leader, Team 5, Section III, Enforcement Division, MC 149
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and a copy to:

Sam Barrett, Manager, Waste Section, Arlington Regional Office
Texas Commission on Environmental Quality
1101 East Arkansas Lane
Arlington, Texas 77010-6499

The Commission has jurisdiction over Respondent and authority to revoke the registrations and order the corrective action requested by the ED. Further, the State Office of Administrative Hearings has jurisdiction over this matter as reflected in the Conclusions of Law that are in the attached Default Order.

III. NOTICE

On February 6, 2007, the ED mailed the notice of hearing to Respondent's last known address. Further, on February 16, 2007, Respondent received personal service of the notice of hearing.¹ The notice of hearing included the ED's First Amended Report and Petition. Respondent failed to appear at the preliminary hearing scheduled for March 15, 2007, concerning the ED's allegations and recommendation.

IV. DEFAULT JUDGMENT

Default judgment in this case is entered pursuant to 30 TEX. ADMIN. CODE § 70.106 and 1 TEX. ADMIN. CODE § 155.55. Those rules specify that any default judgment entered under the rule shall be issued only upon adequate proof that proper notice has been provided to the defaulting party. As set forth in the Findings of Fact and Conclusions of Law, the ALJ finds that the requisite notice has been provided to Respondent in this proceeding, in accordance with TEX. GOV'T CODE ANN. § 2001.052; 1 TEX. ADMIN. CODE §§ 155.27 and 155.55; and 30 TEX. ADMIN. CODE §§ 1.11 and 39.25.

Therefore, the ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law set forth in the attached Default Order, revoking Touche's Scrap Tire Transporter Registration No. 27079 and Scrap Tire Processing Facility Registration No. 79557 and directing Touche to take the specified corrective actions.

SIGNED April 30, 2007.

MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

¹ James Glendening, President of Touche, signed that he received notice of the hearing in this matter.

