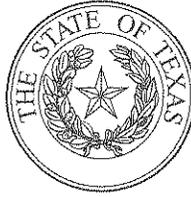


# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

June 14, 2011

Les Trobman, General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin Texas 78711-3087

Re: **SOAH Docket No. 582-11-0872; TCEQ Docket No. 2010-0244-MLM-E; In Re: Executive Director of the Texas Commission on Environmental Quality v. Rodolfo Esparza and Angelica Esparza**

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than July 5, 2011. Any replies to exceptions or briefs must be filed in the same manner no later than July 15, 2011.

This matter has been designated **TCEQ Docket No. 2010-0244-MLM-E; SOAH Docket No. 582-11-0872**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink, appearing to read "Travis Vickery".

Travis Vickery  
Administrative Law Judge

TV/lr  
Enclosures  
cc: Mailing List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**AUSTIN OFFICE**

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 322-2061

**SERVICE LIST**

**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)

**STYLE/CASE:** RODOLFO ESPARZA AND ANGELICA ESPARZA

**SOAH DOCKET NUMBER:** 582-11-0872

**REFERRING AGENCY CASE:** 2010-0244-MLM-E

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ TRAVIS VICKERY**

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**REPRESENTATIVE / ADDRESS**

**PARTIES**

BLAS J. COY, JR.  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
OFFICE OF PUBLIC INTEREST COUNSEL  
P.O. BOX 13087, MC-103  
AUSTIN, TX 78711-3087  
(512) 239-6363 (PH)  
(512) 239-6377 (FAX)  
bcoy@tceq.state.tx.us

TCEQ PUBLIC INTEREST COUNSEL

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PHILLIP M. GOODWIN, P.G.  
STAFF ATTORNEY  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
LITIGATION DIVISION, MC 175  
PO BOX 13087  
AUSTIN, TX 78711  
(512) 239-0675 (PH)  
(512) 239-3434 (FAX)  
pgoodwin@tceq.state.tx.us

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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RODOLFO & ANGELICA ESPARZA  
P.O. BOX 1383  
CLINT, TX 79836  
(915) 740-1819 (PH)  
(512) 322-2061 (FAX)

RODOLFO & ANGELICA ESPARZA

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**SOAH DOCKET NO. 582-11-0872  
TCEQ DOCKET NO. 2010-0244-MLM-E**

**EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
Petitioner**

**V.**

**RODOLFO ESPARZA AND  
ANGELICA ESPARZA,  
Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) alleges that Rodolfo Esparza (Respondent) violated 30 TEX. ADMIN. CODE (TAC) §§ 111.201 and 330.15(c) and TEX. HEALTH & SAFETY CODE § 382.085(b) regarding the state's municipal solid waste (MSW), used and scrap tire, and air quality programs. For these violations, the ED recommends that the Commission assess a total of \$13,155.00 in administrative penalties to be reduced to \$3,600, based on Respondent's ability to pay. The ED also recommends that Respondent be ordered to take certain corrective actions.<sup>1</sup>

Respondent argues that he has cleaned roughly 80% of the site and that he needs the scrap tires for a fence. Respondent also argues that he lacks the financial ability to pay the requested administrative penalty.<sup>2</sup>

The Administrative Law Judge (ALJ) concludes that: the ED established the violations; the recommended corrective actions should be instituted with one exception; the proposed

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<sup>1</sup> ED Ex. 9.

<sup>2</sup> The Executive Director's Preliminary Report and Petition originally named Mr. Esparza's wife, Angelica Esparza as a respondent. However, as the Esparzas are currently divorced, the ED nonsuited Angelica Esparza at the hearing on the merits.

penalty was correctly calculated in accordance with applicable law and the Commission's September 2002 Penalty Policy (Penalty Policy);<sup>3</sup> and the Respondent should be assessed \$13,155.00 in administrative penalties to be reduced to \$3,600.00 payable in 36 monthly installments of \$100.00, contingent on Respondent's compliance with the Commission's final order.

## II. JURISDICTION

Respondent does not dispute the Commission's or SOAH's jurisdiction, and the Proposed Order contains the necessary finding of fact and conclusions of law.

## III. PROCEDURAL HISTORY AND DETAILS OF THE VIOLATIONS

Respondent owns property in El Paso County, Texas, where he has collected and disposed of used and scrap tires and MSW (the Site). The Commission has no record of a permit or permit application from Respondent for authorization to permit the disposal, storage, or burning of tires, or the disposal and storage of MSW at the Site.<sup>4</sup>

In August 2007, a complaint was received from the El Paso County Fire Marshall because there had been a fire at the Site. During an August 16, 2007 complaint investigation of the Site, a TCEQ Environmental Investigator documented the following violation:

30 TAC § 330.15(c), by failing to prevent the dumping or disposal of MSW without the written authorization of the Commission. It was noted during the investigation that several piles of MSW consisting of wood, trash, and sheetrock were present at the Site.

Among the investigator's concerns were: the Site was not an authorized MSW storage facility; potential combustibility of the MSW; air quality impaired by potential fires; insect and rodent

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<sup>3</sup> ED Ex. 6.

<sup>4</sup> ED Ex. 15.

control; unknown materials in and leaking from automotive waste and 55 gallon drums; ground water contamination; lack of regulation; lack of financial assurance.<sup>5</sup>

On October 1, 2007, the Commission issued a Notice of Violation (NOV) documenting the violation observed during the August 16, 2007 investigation. The NOV was received by the Respondent and required corrective action of proper disposal of the MSW and disposal documentation.<sup>6</sup>

On March 27, 2008, the same TCEQ investigator conducted a follow-up investigation to evaluate Respondent's compliance with the NOV. The investigator noted that the unauthorized MSW had been removed from the Site, that corresponding documentation existed, and the remaining items were either being used as fencing and construction materials or scrap metal. The investigator concluded that the alleged violation had been resolved. On March 31, 2008, the TCEQ issued a Notice of Compliance to the Respondent.<sup>7</sup>

On November 23, 2009, the office of Texas State Representative Chente Quintanilla received a complaint concerning unauthorized disposal of waste at the Site. The investigation was assigned to TCEQ El Paso Environmental Investigator Jose Ojeda. On November 24, 2009, Mr. Ojeda conducted an unannounced visit to the Site accompanied by the Chief of Staff for Representative Quintanilla. During the trip, they observed a truck loaded with tractor trailer tires and followed it to the Site, where the tires were unloaded. In the course of the investigation, it was determined that Respondent was being paid \$2.00 per tire unloaded at the Site by the truck driver and at Respondent's request.

During the November 24, 2009 investigation of the Site, Mr. Ojeda documented the following violations:

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<sup>5</sup> ED Ex. 7; testimony of Jose Ojeda.

<sup>6</sup> ED Ex. 7; Ex. 5 at 9.

<sup>7</sup> ED Ex. 8.

30 TAC § 330.15(c), by failing to prevent the unauthorized disposal of MSW. Specifically, approximately 19,000 scrap tires (roughly 1,900 cubic yards) and approximately 100 cubic yard of MSW including 55 gallon drums, empty five-gallon plastic buckets, automotive body parts, construction debris, and wood pallets being disposed of at the site; and

30 TAC § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to comply with the general prohibition on outdoor burning. Specifically, approximately 15 scrap tires were burned at the Site.<sup>8</sup>

On January 8, 2010, the ED sent Respondent a Notice of Enforcement (NOE), which he received on or about January 13, 2010.<sup>9</sup> The ED's concerns with the MSW, tires and other items seen during the 2009 investigation are similar to those expressed for the 2007 investigation.

On June 2, 2010, the ED sent the Executive Director's Preliminary Report and Petition (EDPRP) to Respondent, which he received.<sup>10</sup> On August 10, 2010, Respondent filed an answer to the EDPRP and requested a hearing.<sup>11</sup>

On October 5, 2010, the ED requested referral of this case to the State Office of Administrative Hearings (SOAH) for the assignment of an ALJ to conduct a hearing and issue a Proposal for Decision. On December 3, 2010, the Commission issued its notice of hearing in this matter. On January 6, 2011, the parties attended a preliminary hearing and agreed on a date for the hearing on the merits. On January 7, 2011, the ALJ issued Order No. 1, setting the hearing on the merits for May 3, 2011.

On March 14, 2011, Mr. Ojeda revisited the Site and determined that there was the same approximate number of tires at the Site as existed during the 2009 investigation. Although some vehicles had been removed from the property, Mr. Ojeda testified that the property appeared largely as it did during the 2009 investigation, and the Respondent had failed to comply with the

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<sup>8</sup> ED Ex. 1; ED Ex.9; testimony of Jose Ojeda.

<sup>9</sup> ED Ex. 1; ED Ex. 5 at 9-10.

<sup>10</sup> ED Ex. 1.

<sup>11</sup> ED Ex. 2.

Commission's rules as outlined in the NOE. As regards the EDPRP, Mr. Ojeda also testified that the corrective actions identified therein have not occurred.<sup>12</sup>

The hearing on the merits was held on May 3, 2011, before ALJ Travis Vickery. The ED appeared and was represented by Kari Gilbreth, attorney. Respondent appeared by telephone and represented himself. The record closed the same day.

#### IV. CORRECTIVE ACTIONS

Pursuant to TEX. WATER CODE § 7.073, the ED recommends that Respondent comply with the following corrective measures:

- a. Immediately upon the effective date of the Commission Order, Respondent shall:
  1. Cease disposing of any additional waste at the Site;
  2. Cease all unauthorized burning of waste at the Site;
- b. Within 60 days after the effective date of the Commission Order, Respondent shall remove all MSW and dispose of all MSW at an authorized facility; and
- c. Within 75 days after the effective date of the Commission Order, Respondent shall submit written notarized certification and detailed supporting documentation, including photographs, receipts, and/or other records to demonstrate compliance with requirements (a) and (b) above.<sup>13</sup>

As stated above, as of March 14, 2011, the ED determined that Respondent had not instituted any of the proposed corrective actions.

Respondent testified that the scrap tires were gathered to be used as a fence for his property, the building materials were related to his past work as a contractor, and the pallets he once used to burn slop for hogs he owned and as heating fuel. Respondent further testified that

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<sup>12</sup> ED Ex. 10; testimony of Jose Ojeda.

<sup>13</sup> ED Ex. 1 at 5-6.

he has been working on his property and at the time of the May 3, 2011 hearing, the Site was 80% cleared of non-tire debris, metals, barrels, and wood pallets. Respondent contends, however, that he still needs the tires to fence his property, and that he lacks the financial means to pay for proper disposal of the tires.

Mr. Ojeda testified, however, that while the vehicles had been removed at the time of his March 14, 2011 inspection, other MSW was still present and new MSW had been added since the November 24, 2009 investigation. Mr. Ojeda also testified that, based on the haphazard placement of tires at the Site, Respondent was not using them strictly to build a fence. This is consistent with the fact that at least one truck owner was paying Respondent \$2.00 per tire to dump them at the Site. The ALJ finds that the best resolution of this fact issue is to institute the proposed corrective measures and then monitor Respondent's compliance as set out in the proposed order.

The ALJ finds that the ED's recommended corrective measures are appropriate and recommends their institution, with the following exception: the ALJ proposes that Respondent be allowed to complete fencing his property in a manner specified by the Commission; and that Respondent only be required to remove those tires remaining after completion of the fence. The details and implementation of this option were not fully explored at the hearing. As a result, the ALJ may not have complete evidentiary support for an enforcement mechanism for this recommendation. Nevertheless, Mr. Ojeda did testify that for a compliant fence, the tires would have to be stacked, anchored, and filled with earth or sand to control vermin and insects. While some tires at the Site were stacked, they lacked anchoring and earth-fill. The ALJ proposes this option as means to allow Respondent to fence the Site and also partially avoid the cost of disposing of all tires at the Site. The proposed order includes an ordering provision with a requirement that Respondent stack, anchor, and fill tires to create a compliant fence. In the event that there are other technical requirements or enforcement mechanisms, the ALJ invites the parties to file exceptions to the proposed order. In the event the Commission later determines

Respondent failed to meet his obligations for building a fence, the ALJ recommends requiring the removal of all tires at the Site.<sup>14</sup>

## V. PENALTIES AND FINANCIAL ABILITY TO PAY

Elvia Maske, an Enforcement Coordinator for the Commission, testified regarding the development of the penalty amount, the penalty calculation worksheet, and the Penalty Policy. Respondent did not contest Ms. Maske's testimony and offered no evidence or argument to show that the ED's calculations were incorrect. The ALJ finds that the ED has supported its request for \$13,155.00 in administrative penalty, which was properly calculated and is consistent with the Penalty Policy. As a result, there is no further discussion of the amount of the penalty sought.

The penalty is, however, subject to a reduction based on Respondent's inability to pay. Respondent testified that he cannot afford the administrative penalty, because although he is employed, he works on commission and currently has no steady income.<sup>15</sup> Paige Seidenberger, a Financial Analyst at the Commission, testified regarding Respondent's ability to pay the administrative penalty and the Commission's Financial Review Policy. Ms. Seidenberger performed a review of Respondent's financial records and determined that Respondent was eligible for a reduction in the penalty amount. Specifically, Ms. Seidenberger and the Commission's Financial Division recommend the penalty be reduced to \$3,600.00, to be paid in \$100.00 monthly installments for 36 months. A deferral is expressly contingent upon compliance. As a result, the remainder of the penalty is to be deferred and only reinstated if Respondent fails to comply with the Commission's order.

The ALJ concludes that all of the penalties were properly calculated in accordance with the Commission's Penalty Policy. He recommends that the Commission assess Respondent a

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<sup>14</sup> Ojeda testimony at 2:20:00-2:25:00. *See also*, ED Ex. 10 generally and at photos 3, 8.

<sup>15</sup> Respondent testimony at 2:26:30-2:27:30.

total of \$13,155.00 in administrative penalties, reduced to \$3,600.00 based on Respondent's compliance with the terms of the Commission's order.

## VI. SUMMARY

The ALJ recommends that the Commission adopt the attached proposed order, finding that Respondent committed the alleged violations, requiring Respondent to pay \$3,600.00 in administrative penalties for those violations, contingent upon his compliance with the terms of the proposed order, and to take the specified corrective actions.

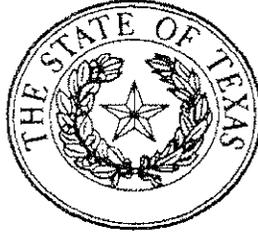
**SIGNED June 14, 2011**



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**TRAVIS VICKERY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



**AN ORDER  
ASSESSING ADMINISTRATIVE PENALTIES AGAINST AND  
ORDERING CORRECTIVE ACTION BY  
RODOLFO ESPARZA;  
TCEQ DOCKET NO. 2010-0244-MLM-E  
SOAH DOCKET NO. 582-11-0872**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Preliminary Report and Petition recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Rodolfo Esparza (Respondent or Esparza). A Proposal for Decision (PFD) was presented by Travis Vickery, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the Petition on May 3, 2011, in Austin, Texas.

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 property located on Roberts Road, approximately one mile east from the end of High Campus Road, El Paso County, Texas, that involves the storage and disposal of used and scrap tires and municipal solid waste (MSW) (the Site).

2. The Texas Commission on Environmental Quality (TCEQ or Commission) has no record of a permit or permit application from Respondent for authorization to permit the disposal, storage, or burning of tires, or the disposal and storage of MSW at the Site.
3. During an August 16, 2007 complaint investigation of the Site, a TCEQ Environmental Investigator documented the following violation:

30 TEX. ADMIN. CODE (TAC) § 330.15(c), by failing to prevent the dumping or disposal of MSW without the written authorization of the Commission. It was noted during the investigation that several piles of MSW consisting of wood, trash, and sheetrock were present at the Site.
4. On October 1, 2007, the Commission issued a Notice of Violation (NOV) documenting the violation observed during the August 16, 2007 investigation. The NOV was received by the Respondent and required corrective action of proper disposal of the MSW and disposal documentation.
5. On March 27, 2008, a TCEQ investigator conducted a follow-up investigation to evaluate Respondent's compliance with the October 1, 2007 NOV. The investigator noted that the unauthorized MSW had been removed from the Site, that corresponding documentation existed, and the remaining items were either being used as fencing and construction materials or scrap metal. The investigator concluded that the alleged violation had been resolved. On March 31, 2008, the TCEQ issued a Notice of Compliance to Respondent.
6. On November 23, 2009, the office of Texas State Representative Chente Quintanilla received a complaint concerned unauthorized disposal of waste at the Site. On November 24, 2009, a TCEQ investigator conducted an unannounced visit to the Site accompanied by the Chief of Staff for Representative Quintanilla. While traveling to the Site, they observed a truck loaded with tractor trailer tires and followed it to the Site, where the tires were unloaded. It was determined that Respondent was being paid \$2.00 per tire unloaded at the Site by the truck driver. During the November 24, 2009 investigation of the Site, the investigator documented the following violations:

30 TAC § 330.15(c), by failing to prevent the unauthorized disposal of MSW. Specifically, approximately 19,000 scrap tires (roughly 1,900 cubic yards) and approximately 100 cubic yard of MSW including 55 gallon drums, empty five-gallon plastic buckets, automotive body parts, construction debris, and wood pallets being disposed of at the site; and

30 TAC § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to comply with the general prohibition on outdoor burning. Specifically, approximately 15 scrap tires were burned at the Site.

7. On January 8, 2010, the Executive Director of the Texas Commission on Environmental Quality sent Respondent a Notice of Enforcement (NOE), which he received on or about January 13, 2010.
8. On June 2, 2010, the Executive Director sent the Executive Director's Preliminary Report and Petition (EDPRP) to Respondent, which he received.
9. On August 10, 2010, Respondent filed an answer to the EDPRP and requested a hearing.
10. On October 5, 2010, the Executive Director requested referral of this case to the State Office of Administrative Hearings (SOAH) for the assignment of an Administrative Law Judge (ALJ) to conduct a hearing and issue a Proposal for Decision.
11. On December 3, 2010, the Commission issued a notice of preliminary hearing in this matter, which the Respondent received. The notice of the preliminary 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 that Respondent violated; referred to the EDPRP, which was attached and stated the facts asserted by the Executive Director; and requested an administrative penalty and corrective actions.
12. On January 6, 2011, the parties attended a preliminary hearing and jurisdiction was proven. The Executive Director and Respondent appeared and were admitted as parties. The parties agreed on a date for the hearing on the merits.

13. On January 7, 2011, a SOAH ALJ issued Order No. 1, setting the hearing on the merits for May 3, 2011.
14. On March 14, 2011, a TCEQ investigator inspected the Site. With the exception of the removal of some vehicles and the addition of new MSW, the Site appeared largely as it did during the November 24, 2009 investigation.
15. As of March 14, 2011, the Respondent had failed to comply with the Commission's rules or the Texas Health and Safety Code as outlined in the NOE.
16. The hearing on the merits was held on May 3, 2011, before ALJ Travis Vickery. The Executive Director appeared and was represented by Kari Gilbreth, attorney. Respondent appeared by telephone and represented himself. The record closed the same day.
17. In the EDPRP, the Executive Director recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$13,155.00.
18. The administrative penalty of \$13,155.00 is reasonable and necessary and was calculated according to the TCEQ Penalty Policy.
19. Under the Commission's Financial Review Policy, the penalty payable by Respondent may be reduced to \$3,600.00, with the remaining amount of the administrative penalty deferred contingent upon compliance with the corrective actions, including compliance with the timely payment of the administrative penalty.
20. The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Respondent and determined that Respondent is unable to pay part of the administrative penalty and recommends a deferral of \$9,555.00, contingent upon Respondent's timely and satisfactory compliance with the terms of this Order.

21. In the EDPRP, the Executive Director also recommended that the Commission order Respondent to take certain corrective measures.
22. The corrective measures set forth in the EDPRP are necessary and appropriate given the violations.

## **II. CONCLUSIONS OF LAW**

1. Under TEX. WATER CODE ANN. (Water Code) § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Water Code or of the Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under Water Code § 7.052, a penalty may not exceed \$10,000 per violation, per day for each of the violations at issue in this case.
3. Additionally, the Commission may order the violator to take corrective action. Water Code § 7.073.
4. As required by Water Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations or the penalties and corrective actions proposed therein.
5. As required by TEX. GOV'T CODE ANN. (Gov't Code) §§ 2001.051(1) and 2001.052; Water Code § 7.058; 1 TAC § 155.401, and 30 TAC §§ 1.11, 1.12, 39.25, 70.104, and 80.6(b)(3), Respondent was notified of the hearing on the alleged violations and the proposed penalties and corrective actions.
6. SOAH has jurisdiction over the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Gov't Code ch. 2003.

7. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 30 TAC §§ 111.201 and 330.15(c), and TEX. HEALTH & SAFETY CODE § 382.085(b).
8. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
9. In determining the amount of an administrative penalty, Water Code § 7.053 requires the Commission to consider several factors, including:
  - The violation's impact or potential impact on public health and safety, natural resources and their uses, and other persons;
  - The nature, circumstances, extent, duration, and gravity of the prohibited act;
  - The history and extent of previous violations by the violator;
  - The violator's degree of culpability, good faith, and economic benefit gained through the violation;
  - The amount necessary to deter future violations; and
  - Any other matters that justice may require.
10. Based on the above Findings of Fact, the factors set out in Water Code § 7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for each of the alleged violations and a total administrative penalty of \$13,155.00 is justified and should be assessed against Respondent.
11. Because of Respondent's inability to pay, all but \$3,600.00 of the administrative penalty should be deferred pending compliance with the terms of this Order. Respondent should be allowed to pay a reduced administrative penalty of \$3,600 in 36 monthly installments of \$100.00 as provided in the Commission's Financial Review Policy.
12. Based on the above Findings of Fact, Respondent should be required to take the corrective action measures that the Executive Director recommends.

### III. ORDERING PROVISIONS

**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. Rodolfo Esparza is assessed an administrative penalty in the amount of \$13,155.00 for violations of 30 TAC §§ 111.201 and 330.15(c), and TEX. HEALTH & SAFETY CODE § 382.085(b), with \$9,555.00 deferred contingent upon Esparza's timely and satisfactory compliance with the terms of this Order. The penalty may be paid in \$100 monthly increments over a period of 36 months. The first monthly payment shall be made within 30 days after the effective date of this Order. The payment of this administrative penalty and Esparza's compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out the "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: Rodolfo Esparza; Docket No. 2010-0244-MLM-E" to:

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

2. Immediately upon the effective date of this Order, Rodolfo Esparza shall:
  1. Cease disposing of any additional waste at the Site; and
  2. Cease all unauthorized burning of waste at the Site;

3. Within 60 days after the effective date of this Order, Rodolfo Esparza shall either dispose of all scrap tires at the Site at an authorized facility, or establish a fence along the perimeter of the Site using scrap tires, which is compliant with the Commission's rules, including stacking, anchoring, and filling the tires with earth or sand. All tires not used in the construction of the fence shall be disposed of at an authorized facility.
4. Within 60 days after the effective date of this Order, Rodolfo Esparza shall remove all MSW and dispose of all MSW at an authorized facility, other than scrap tires used to construct a fence.
5. Within 75 days after the effective date of this Order, Rodolfo Esparza shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records to demonstrate compliance with requirements (2), (3) and (4) above. The certification shall be notarized by a State of Texas Notary Public and 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.”

6. Rodolfo Esparza shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Waste Section Manager  
Texas Commission on Environmental Quality  
El Paso Regional Office  
401 East Franklin Avenue, Suite 560  
El Paso, Texas 79901-1206

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (OAG) for further enforcement proceedings without notice to Rodolfo Esparza if the Executive Director determines that Esparza has not complied with one or more of the terms or conditions in this Commission Order.
8. 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.
9. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Gov't Code § 2001.144.
10. As required by Water Code § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Esparza.
11. If any provision, sentence, clause, or phrase of this 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**

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**Bryan W. Shaw, Ph.D., Chairman**  
**For the Commission**