

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

May 31, 2016

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

Re: **SOAH Docket No. 582-14-2667; TCEQ Docket No. 2013-1973-MSW-E; In
Re: Executive Director of the Texas Commission on Environmental Quality
v. RGV Tire Recycling Group, LLC**

Dear Mr. Royall:

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 on Summary Disposition 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 June 20, 2016. Any replies to exceptions or briefs must be filed in the same manner no later than June 29, 2016.

This matter has been designated **TCEQ Docket No. 2013-1973-MSW-E; SOAH Docket No. 582-14-2667**. 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 "Elizabeth Drews".

Elizabeth Drews
Administrative Law Judge

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: RGV TIRE RECYCLING GROUP LLC
SOAH DOCKET NUMBER: 582-14-2667
REFERRING AGENCY CASE: 2013-1973-MSW-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ ELIZABETH DREWS**

REPRESENTATIVE / ADDRESS

PARTIES

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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RGV-TIRE-RECYCLING-GROUP, LLC

**SOAH DOCKET NO. 582-14-2667
TCEQ DOCKET NO. 2013-1973-MSW-E**

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

v.

**RGV TIRE RECYCLING GROUP, LLC,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION ON SUMMARY DISPOSITION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) seeks to assess an administrative penalty of \$44,888 and to require RGV Tire Recycling Group, LLC (Respondent) to undertake corrective actions for violations of the Commission's rules regarding municipal solid waste.

As discussed in the Proposal for Decision (PFD), the Administrative Law Judge (ALJ) finds that there are no remaining contested facts at issue and that summary disposition should be rendered in the ED's favor as a matter of law. The ALJ recommends that the Commission:

- conclude that Respondent committed the violations;
- find that an administrative penalty of \$44,888 was calculated according to the Commission's penalty policy and comports with applicable statutory and regulatory authority;
- determine that the recommended corrective actions are necessary and appropriate;
- order that Respondent undertake the corrective actions; and
- assess an administrative penalty of \$44,888.

II. PROCEDURAL HISTORY AND JURISDICTION

On January 23, 2014, Respondent filed a request for hearing and answer to the Executive Director's Preliminary Report and Petition, in which the ED alleged that Respondent violated Commission rules regarding municipal solid waste. On March 6, 2014, the ED filed the Executive Director's First Amended Report and Petition with penalty calculation worksheets (EDFARP). On March 14, 2014, the matter was referred to the State Office of Administrative Hearings (SOAH) for assignment of an ALJ to conduct a hearing and to issue a PFD.

On March 24, 2014, the Commission's Chief Clerk issued notice of the preliminary hearing set for April 24, 2014, at SOAH. On April 24, 2014, the parties filed an agreed motion to waive the preliminary hearing and to approve a proposed procedural schedule. The ALJ granted the motion and set the hearing for September 11, 2014.¹ Between August 6, 2014, and February 6, 2015, the parties filed several unopposed motions to abate the hearing, which the ALJ granted.

On February 17, 2015, the ED and Respondent entered into a written Rule 11 Agreement in which Respondent generally agreed to the violations, the penalty calculation, and the corrective actions the ED had recommended. Respondent agreed to provide by October 31, 2015, information relating to whether it qualified for the Commission's financial inability to pay program (FIP Program). The October 31, 2015 deadline was based on the parties' expectation that related litigation in court would be resolved by that date. Respondent also agreed that failure to meet that deadline would waive Respondent's claim of financial inability to pay.

¹ The ALJ admitted the following exhibits solely to show jurisdiction: the EDFARP (Ex. ED-A); Respondent's request for hearing and answer to the Executive Director's Preliminary Report and Petition (Ex. ED-B); TCEQ's request to refer the matter to SOAH (Ex. ED-C); and the notice of public hearing (Ex. ED-D). The parties are the ED, Respondent, and the Office of Public Interest Counsel.

Also on February 17, 2015, the ED filed an agreed motion to approve the parties' stipulations and to extend abatement of the case, to allow time for the FIP Program analysis and finalization of a settlement agreement. The ALJ granted the motion.

On November 30, 2015, the ED filed a status report requesting that abatement of this case be lifted and that the ED be allowed to file a motion for summary disposition. The request was not opposed and was granted. On March 17, 2016, the ED filed a motion for summary disposition (MSD), which was based on the parties' stipulations. Respondent did not file a response to the MSD.²

III. LEGAL GROUNDS FOR SUMMARY DISPOSITION

Summary disposition may be granted if the moving party shows that it is entitled to relief as a matter of law. The Commission's rule on summary disposition is found at 30 Texas Administrative Code § 80.137. The rule provides, in pertinent part:

Summary disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records if any, on file in the case at the time of hearing, or filed thereafter and before judgment with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response.³

Subject to the ALJ's approval, the parties may stipulate to any factual, legal, or procedural matters.⁴

² The response to the MSD was due on April 6, 2016. Order No. 8 (March 18, 2016).

³ 30 Tex. Admin. Code § 80.137(c).

⁴ 1 Tex. Admin. Code § 155.417.

IV. ANALYSIS

The ED's MSD is based on the parties' stipulations filed on February 17, 2015. The stipulations were part of a compromise to potentially avoid a hearing on the merits and to allow time for Respondent to provide and the ED to review records regarding Respondent's financial ability to pay the administrative penalty. The stipulations were executed by a staff attorney for the ED and José L. Caso, attorney for Respondent.

The ED attached to the MSD ten exhibits, which include the stipulations. Because Respondent did not respond to the MSD, the exhibits are admitted.⁵ Findings based on the stipulations and other exhibits are fully set forth in the Findings of Fact and Conclusions of Law in the Proposed Order. The stipulations establish the following facts:

1. RGV Tire Recycling Group, LLC (Respondent) operated a scrap tire storage and processing facility located at 9106 S. Austin Drive, Pharr, Hidalgo County, Texas (Facility 1). Respondent also operated an unauthorized scrap tire storage and processing facility located at 100 S. Austin Drive, Suite D, Pharr, Hidalgo County, Texas (Facility 2). (Facility 1 and Facility 2 are collectively referred to as the Facilities). The Facilities involve the management and/or the disposal of municipal solid waste as defined in Texas Health & Safety Code chapter 361.
2. During an investigation conducted at Facility 1 between April 19, 2013, and May 2, 2013, a TCEQ Harlingen Regional Office investigator documented that Respondent violated 30 Texas Administrative Code § 328.63(c)⁶ by failing to maintain scrap tire storage to a maximum of 500 used or scrap tires (or the equivalent in tire pieces) on the ground, or 2,000 used or scrap tires (or the equivalent in tire pieces) in lockable containers at Facility 1. Specifically,

⁵ The MSD exhibits are: the stipulations (Ex. 1); the Rule 11 Agreement (Ex. 2); Order No. 5 approving the stipulations (Ex. 3); the ED's November 30, 2015 status report and motion to lift abatement of the case (Ex. 4); Order No. 6 granting that motion (Ex. 5); Order No. 7 setting a deadline for the ED to file the MSD (Ex. 6); the EDFARP with penalty calculation worksheets (Ex. 7); a Commission investigation report regarding Respondent (Ex. 8); a Commission investigation report regarding Pharr Economic Development Corporation, Inc. (Ex. 9); and a June 12, 2012 letter notifying Respondent that its scrap tire facility registration had been approved (Ex. 10).

⁶ This rule provides that an owner or operator of a facility that processes used or scrap tires or tire pieces, but does not conduct recycling or energy recovery on-site, must obtain a scrap tire storage site registration in accordance with 30 Texas Administrative Code § 328.60 if the facility is intended to store more than 500 used or scrap tires (or equivalent tire pieces) on the ground or 2,000 used or scrap tires (or equivalent tire pieces) in trailers.

approximately 22,410 scrap tires (2,241 cubic yards) were being stored at Facility 1.

3. During an investigation conducted at Facility 2 between April 22, 2013, and May 2, 2013, a TCEQ Harlingen Regional Office investigator documented that Respondent violated 30 Texas Administrative Code § 330.15(c)⁷ by failing to prevent the unauthorized disposal of municipal solid waste. Specifically, approximately 1,000 scrap tires (100 cubic yards) were disposed of at Facility 2.
4. The facts and allegations contained in Paragraph 2 are true and accurate, and Respondent did violate 30 Texas Administrative Code § 328.63(c) by failing to maintain scrap tire storage to a maximum of 500 used or scrap tires (or the equivalent in tire pieces) on the ground, or 2,000 used or scrap tires (or the equivalent in tire pieces) in lockable containers at Facility 1.
5. The facts and allegations contained in Paragraph 3 are true and accurate, and Respondent did violate 30 Texas Administrative Code § 330.15(c) by failing to prevent the unauthorized disposal of municipal solid waste at Facility 2.
6. Respondent and the Executive Director agree to the following corrective measures:⁸
 - a. Immediately upon the effective date of the Commission Order, Respondent shall cease any additional unauthorized storage and disposal of municipal solid waste, including scrap tires and scrap tire pieces, at the Facilities;
 - b. Within 30 days after the effective date of the Commission Order, Respondent shall remove all municipal solid waste from the Facilities, including used or scrap tires and tire pieces, and dispose of it at an authorized facility; and
 - c. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification to demonstrate compliance with the corrective measures in Paragraphs 6.a. and 6.b. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/ or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

⁷ This rule provides that a person may not cause, suffer, allow, or permit the dumping or disposal of municipal solid waste without the Commission's written authorization.

⁸ The Commission is authorized to order a person who violates a statute or rule within the Commission's jurisdiction to take corrective action. Tex. Water Code § 7.073.

"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."

Respondent 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

and:

Francisco J. Chavero, Jr., Waste Section Manager
Texas Commission on Environmental Quality
Harlingen Regional Office
1804 West Jefferson Ave.
Harlingen, Texas 78550-5247

7. Based on the facts supporting the violations, the Executive Director recommends that an administrative penalty be imposed pursuant to Texas Water Code § 7.051. The Commission has the authority under Texas Water Code § 7.052 (effective September 1, 2011) to assess an administrative penalty of up to \$25,000 for each day of each violation.
8. In determining the amount of the penalty, the Commission is required by Texas Water Code § 7.053 to consider:
 - a. The nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment of existing water rights or the hazard or potential hazard created to the health or safety of the public;

- b. The impact of the violation on:
 - i. air quality in the region;
 - ii. a receiving stream or underground water reservoir;
 - iii. instream uses, water quality, aquatic and wildlife habitat, or beneficial freshwater inflows to bays and estuaries; or
 - iv. affected persons;
 - c. With respect to the alleged violator:
 - i. the history and extent of previous violations;
 - ii. the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
 - iii. demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;
 - iv. economic benefit gained through the violation; and
 - v. the amount necessary to deter future violations; and
 - d. Any other matters that justice may require.
9. Based on the facts supporting the violations, and having considered the above-described factors, the Executive Director recommends that Respondent be required to pay an administrative penalty in the amount of forty-four thousand eight hundred eighty-eight dollars (\$44,888.00).
10. The Executive Director followed an established penalty policy approved by the Commission in calculating the penalty in this enforcement action. *See Texas Commission on Environmental Quality Penalty Policy (September 1, 2011).*
11. The Respondent and the Executive Director agree that the penalty amount of forty-four thousand eight hundred eighty-eight dollars (\$44,888.00) was calculated consistently with all applicable statutes and rules and is an appropriate penalty in this enforcement matter.

The stipulations establish that there is no genuine issue of material fact regarding Respondent's violations, the appropriateness of the corrective actions, and the appropriateness of a \$44,888 administrative penalty. The ED is entitled to prevail as a matter of law.

V. CONCLUSION

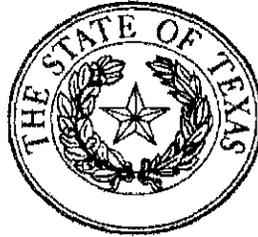
The ALJ recommends that the Commission find the violations occurred, assess an administrative penalty of \$44,888, and order the corrective actions agreed to by the parties.

SIGNED May 31, 2016.



**ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
ASSESSING AN ADMINISTRATIVE PENALTY AGAINST
AND ORDERING CORRECTIVE ACTIONS BY
RGV TIRE RECYCLING GROUP, LLC
TCEQ DOCKET NO. 2013-1973-MSW-E
SOAH DOCKET NO. 582-14-2667**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's First Amended Report and Petition (EDFARP) recommending that the Commission enter an order assessing an administrative penalty against and requiring corrective actions by RGV Tire Recycling Group, LLC (Respondent). A proposal for decision (PFD) was presented by Elizabeth Drews, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1. RGV Tire Recycling Group, LLC (Respondent) operated a scrap tire storage and processing facility located at 9106 S. Austin Drive, Pharr, Hidalgo County, Texas (Facility 1). Respondent also operated an unauthorized scrap tire storage and processing facility located at 100 S. Austin Drive, Suite D, Pharr, Hidalgo County, Texas

(Facility 2). (Facility 1 and Facility 2 are collectively referred to as the Facilities). The Facilities involve the management and/or the disposal of municipal solid waste as defined in Texas Health & Safety Code chapter 361.

2. During an investigation conducted at Facility 1 between April 19, 2013, and May 2, 2013, a TCEQ Harlingen Regional Office investigator documented that Respondent violated 30 Texas Administrative Code § 328.63(c) by failing to maintain scrap tire storage to a maximum of 500 used or scrap tires (or the equivalent in tire pieces) on the ground, or 2,000 used or scrap tires (or the equivalent in tire pieces) in lockable containers at Facility 1. Specifically, approximately 22,410 scrap tires (2,241 cubic yards) were being stored at Facility 1.
3. During an investigation conducted at Facility 2 between April 22, 2013, and May 2, 2013, a TCEQ Harlingen Regional Office investigator documented that Respondent violated 30 Texas Administrative Code § 330.15(c) by failing to prevent the unauthorized disposal of municipal solid waste. Specifically, approximately 1,000 scrap tires (100 cubic yards) were disposed of at Facility 2.
4. On January 23, 2014, Respondent filed a request for hearing and answer to the Executive Director's Preliminary Report and Petition.
5. On March 6, 2014, the ED filed the Executive Director's First Amended Report and Petition with penalty calculation worksheets (EDFARP).
6. On March 14, 2014, the case was referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing and preparation of a Proposal for Decision.
7. On March 24, 2014, the Commission's Chief Clerk issued notice of the preliminary hearing to Respondent.
8. The March 24, 2014 notice of hearing:
 - a. Indicated the time, date, place, and nature of the hearing;
 - b. Stated the legal authority and jurisdiction for the hearing;
 - c. Indicated the statutes and rules that the ED alleged Respondent violated;
 - d. Advised Respondent that failure to appear at the preliminary hearing or the evidentiary hearing would result in the factual allegations contained in the notice and the previously filed EDFARP being deemed as true and the relief sought in the notice possibly being granted by default; and
 - e. Included a copy of the ED's penalty calculation worksheets, which show how the penalty was calculated for the alleged violations.

9. On April 24, 2014, the parties filed an agreed motion to waive the preliminary hearing and a proposed procedural schedule. On April 24, 2015, the ALJ issued Order No. 1, which granted the motion and set the hearing for September 11, 2014.
10. Between August 6, 2014, and February 6, 2015, the parties filed several unopposed motions to abate the hearing, which the ALJ granted.
11. On February 17, 2015, Respondent entered into a written agreement with the ED. Respondent agreed that it had violated 30 Texas Administrative Code §§ 328.63(c) and 330.15(c), agreed to corrective measures listed in the agreement, and agreed to a penalty amount of forty-four thousand eight hundred eighty-eight dollars (\$44,888.00). Respondent also agreed to provide by October 31, 2015, information relating to whether it qualified for the Commission's financial inability to pay program (FIP Program). Respondent agreed that failure to provide the information by that deadline would waive Respondent's claim of financial inability to pay.
12. On February 17, 2015, the ED filed an agreed motion to approve the stipulations and to extend abatement of the case. The purpose of the extension was to allow time for Respondent to submit, and the ED to review, information to determine if Respondent qualified for the FIP Program and for a settlement agreement to be finalized. The motion was granted.
13. On November 30, 2015, the ED filed a status report requesting that abatement of this case be lifted and that the ED be allowed to file a motion for summary disposition. The request was granted.
14. On March 17, 2016, the ED filed a motion for summary disposition of this case, which was based on the parties' stipulations. The ED served the motion on Respondent by electronic mail and first class mail and on the Office of Public Interest Counsel by electronic mail.
15. The ALJ set an April 6, 2016 deadline for Respondent to file a response to the motion for summary disposition. No response was filed.
16. The ALJ issued a proposal for decision finding that the ED is entitled as a matter of law to prevail on its motion for summary disposition and recommending that the Commission find that the Respondent committed the violations, assess the penalty, and order the corrective actions agreed to by the parties.
17. The exhibits attached to the motion for summary disposition and the pleadings in this case show that there is no genuine issue as to any material fact and the ED is entitled to summary disposition as a matter of law on all of the issues in this case.

II. CONCLUSIONS OF LAW

1. Under Texas Water Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or of the Texas Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit the Commission adopted or issued thereunder.
2. Under Texas Water Code § 7.052, a penalty may not exceed \$25,000 per violation, per day, for each violation at issue in this case.
3. Respondent is subject to the Commission's enforcement authority, pursuant to Texas Water Code §§ 5.013 and 7.002.
4. Additionally, the Commission may order the violator to take corrective action. Texas Water Code § 7.073.
5. As required by Texas Water Code § 7.055 and 30 Texas Administrative Code §§ 1.11 and 70.104, Respondent was notified of the EDFARP and of the opportunity to request a hearing on the alleged violations or the penalty or corrective actions proposed therein.
6. As required by Texas Government Code §§ 2001.051 and 2001.052; Texas Water Code § 7.058; 1 Texas Administrative Code § 155.401; and 30 Texas Administrative 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 penalty and corrective actions.
7. 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 Texas Government Code chapter 2003.
8. Summary disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits, and authenticated or certified public records, if any, on file in the case at the time of the hearing, or filed thereafter and before judgment with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response. 30 Tex. Admin. Code § 80.137(c).
9. Based on the Findings of Fact, summary disposition should be granted to the ED and against Respondent.
10. Respondent violated 30 Texas Administrative Code §§ 328.63(c) and 330.15(c).

11. In determining the amount of an administrative penalty, Texas Water Code § 7.053 requires the Commission to consider several factors, including:
 - a. The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - b. The violation's impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - c. The history and extent of previous violations by the violator;
 - d. The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - e. The amount necessary to deter future violations; and
 - f. Any other matters that justice may require.
12. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties.
13. The \$44,888 administrative penalty sought in the EDFARP was properly calculated in accordance with the TCEQ Penalty Policy and in consideration of the factors outlined in Texas Water Code § 7.053.
14. A penalty of \$44,888 is justified and should be assessed against Respondent.
15. The corrective actions to which the parties agreed are necessary to bring the Facilities into compliance with the requirements of Texas Health and Safety Code chapter 361 and 30 Texas Administrative Code chapter 330.
16. Respondent should be ordered to take the corrective actions to which the parties agreed.

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. Respondent is assessed an administrative penalty of \$44,888 for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and the performance of all corrective actions listed herein will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Re: RGV Tire Recycling Group, LLC, Docket No. 2013-1973-MSW-E" to:

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

2. Respondent shall undertake the following technical requirements:
- a. Immediately upon the effective date of the Commission Order, Respondent shall cease any additional unauthorized storage and disposal of municipal solid waste, including scrap tires and scrap tire pieces, at the Facilities;
 - b. Within 30 days after the effective date of the Commission Order, Respondent shall remove all municipal solid waste from the Facilities, including used or scrap tires and tire pieces, and dispose of it at an authorized facility; and
 - c. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification to demonstrate compliance with the corrective measures in Paragraphs 2.a. and 2.b. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/ or other records, shall be notarized by a State of Texas Notary Public, 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.”

Respondent 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

and:

Francisco J. Chavero, Jr., Waste Section Manager
Texas Commission on Environmental Quality
Harlingen Regional Office
1804 West Jefferson Ave.
Harlingen, Texas 78550-5247

3. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the ED determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.
4. 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.
5. The effective date of this Order is the date the Order is final, as provided by 30 Texas Administrative Code § 80.273 and Texas Government Code § 2001.144.
6. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
7. 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.

SIGNED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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