

**Rose Bailey**  
**RN105843106**  
**Docket No. 2019-0346-MSW-E**

**Order Type:**  
 Default Order

**Media:**  
 MSW

**Small Business:**  
 N/A

**Location(s) Where Violation(s) Occurred:**  
 604 Bristow Road, San Angelo, Tom Green County (the "Site")

**Type of Operation:**  
 unauthorized municipal solid waste ("MSW") disposal site

**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:** June 3, 2022

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$5,249

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$5,249

**Compliance History Classifications:**

Person/CN - Unclassified  
 Site/RN - Unclassified

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** April 2014

**Investigation Information**

**Complaint Date(s):** September 6, 2018  
*Complaint Information:* Caused, suffered, allowed, or permitted the unauthorized disposal of MSW.

**Date(s) of Investigation:** June 27, 2018 to July 13, 2018 and December 10, 2018

**Date(s) of NOV(s):** September 10, 2018

**Date(s) of NOE(s):** January 15, 2019

Rose Bailey  
RN105843106  
Docket No. 2019-0346-MSW-E

**Violation Information**

Caused, suffered, allowed, or permitted the unauthorized disposal of MSW [30 TEX. ADMIN CODE § 330.15(a) and (c)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Immediately cease any additional disposal of MSW and scrap tires at the Site;
2. Within 30 days, remove all MSW and scrap tires from the Site and dispose of them at an authorized facility, in accordance with 30 TEX. ADMIN. CODE § 330.15(a) and (c); and
3. Within 45 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1 and 2.

**Litigation Information**

**Date Petition(s) Filed:** July 18, 2019; October 3, 2019

**Date Green Card(s) Signed:** unclaimed; unclaimed

**Date Answer(s) Filed:** March 24, 2021

**SOAH Referral Date:** May 19, 2021

**Hearing Date(s):**

Preliminary hearing: July 22, 2021 (defaulted)

**Contact Information**

**TCEQ Attorneys:** Taylor Pearson, Litigation Division, (512) 239-3400  
Garrett Arthur, Public Interest Counsel, (512) 239-6363

**TCEQ Litigation Agenda Coordinator:** Katherine McKenzie, Litigation Division, (512) 239-2575

**TCEQ Enforcement Coordinator:** Berenice Munoz, Enforcement Division, (512) 239-2506

**TCEQ Regional Contact:** Christopher Mayben, San Angelo Regional Office, (325) 659-6704

**Respondent Contact:** Rose Bailey, 604 Bristow Road, San Angelo, Texas 76905

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

## TCEQ

<b>DATES</b>	<b>Assigned</b>	4-Mar-2019	<b>Screening</b>	8-Mar-2019	<b>EPA Due</b>	
	<b>PCW</b>	29-May-2019				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Rose Bailey		
<b>Reg. Ent. Ref. No.</b>	RN105843106		
<b>Facility/Site Region</b>	8-San Angelo	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	57394	<b>No. of Violations</b>	1
<b>Docket No.</b>	2019-0346-MSW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Tyler Gerhardt
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$1,250</b>
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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.

<b>Compliance History</b>	<b>5.0%</b> Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$62</b>
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<b>Notes</b>	Enhancement for one NOV with same/similar violations.
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<b>Culpability</b>	No	<b>0.0%</b> Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$7,497	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$99,690	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$1,312</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0.0%</b> Adjustment	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	<b>\$1,312</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$1,312</b>
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<b>DEFERRAL</b>	Reduction Adjustment	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage.

<b>Notes</b>	No deferral offered.
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<b>PAYABLE PENALTY</b>	<b>\$1,312</b>
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<b>Screening Date</b>	8-Mar-2019	<b>Docket No.</b>	2019-0346-MSW-E	<b>PCW</b>
<b>Respondent</b>	Rose Bailey			<i>Policy Revision 4 (April 2014)</i>
<b>Case ID No.</b>	57394			<i>PCW Revision March 26, 2014</i>
<b>Reg. Ent. Reference No.</b>	RN105843106			
<b>Media [Statute]</b>	Municipal Solid Waste			
<b>Enf. Coordinator</b>	Tyler Gerhardt			

**Compliance History Worksheet**

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

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 5%

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

No

**Adjustment Percentage (Subtotal 3)** 0%

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

Unclassified

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes** Enhancement for one NOV with same/similar violations.

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

**>> Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 5%

<b>Screening Date</b>	8-Mar-2019	<b>Docket No.</b>	2019-0346-MSW-E	<b>PCW</b>
<b>Respondent</b>	Rose Bailey			<i>Policy Revision 4 (April 2014)</i>
<b>Case ID No.</b>	57394			<i>PCW Revision March 26, 2014</i>
<b>Reg. Ent. Reference No.</b>	RN105843106			
<b>Media [Statute]</b>	Municipal Solid Waste			
<b>Enf. Coordinator</b>	Tyler Gerhardt			

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual			X	<b>Percent</b> <input type="text" value="5.0%"/>
Potential					

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> <input type="text" value="0.0%"/>
<b>Matrix Notes</b>	Human health or the environment has been exposed to insignificant amounts of pollutants that do not 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

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	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** Rose Bailey  
**Case ID No.** 57394  
**Reg. Ent. Reference No.** RN105843106  
**Media** Municipal Solid Waste  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### 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	\$99,690	2-Jul-2018	2-Jan-2020	1.50	\$7,497	n/a	\$7,497
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to remove all MSW from the Site and dispose of it at an authorized facility. The date required is the date the violation was discovered, and the final date is the estimated date of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$99,690

**TOTAL**

\$7,497



# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

## TCEQ

<b>DATES</b>	<b>Assigned</b>	4-Mar-2019	<b>Screening</b>	8-Mar-2019	<b>EPA Due</b>	
	<b>PCW</b>	29-May-2019				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Rose Bailey		
<b>Reg. Ent. Ref. No.</b>	RN105843106		
<b>Facility/Site Region</b>	8-San Angelo	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	57394	<b>No. of Violations</b>	1
<b>Docket No.</b>	2019-0346-MSW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Waste Tires	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Tyler Gerhardt
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$3,750
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	5.0% Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	\$187
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<b>Notes</b>	Enhancement for one NOV with same/similar violations.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$211	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$2,800	

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

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$3,937
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$3,937
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<b>DEFERRAL</b>		Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

<b>Notes</b>	No deferral offered.
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<b>PAYABLE PENALTY</b>	\$3,937
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<b>Screening Date</b>	8-Mar-2019	<b>Docket No.</b>	2019-0346-MSW-E	<b>PCW</b>
<b>Respondent</b>	Rose Bailey			<i>Policy Revision 4 (April 2014)</i>
<b>Case ID No.</b>	57394			<i>PCW Revision March 26, 2014</i>
<b>Reg. Ent. Reference No.</b>	RN105843106			
<b>Media [Statute]</b>	Waste Tires			
<b>Enf. Coordinator</b>	Tyler Gerhardt			

**Compliance History Worksheet**

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

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 5%

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

No

**Adjustment Percentage (Subtotal 3)** 0%

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

Unclassified

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes** Enhancement for one NOV with same/similar violations.

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

**>> Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 5%



<b>Screening Date</b>	8-Mar-2019	<b>Docket No.</b>	2019-0346-MSW-E	<b>PCW</b>
<b>Respondent</b>	Rose Bailey			<i>Policy Revision 4 (April 2014)</i>
<b>Case ID No.</b>	57394			<i>PCW Revision March 26, 2014</i>
<b>Reg. Ent. Reference No.</b>	RN105843106			
<b>Media [Statute]</b>	Waste Tires			
<b>Enf. Coordinator</b>	Tyler Gerhardt			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 330.15(a) and (c)			
<b>Violation Description</b>	Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 560 scrap tires had been disposed of at the Site.			
<b>Base Penalty</b>	\$25,000			

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

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual			X	<b>Percent</b> 15.0%
Potential					

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	<b>Percent</b> 0.0%
<b>Matrix Notes</b>	Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health or environmental receptors as a result of the violation.				
<b>Adjustment</b>	\$21,250				

\$3,750

**Violation Events**

Number of Violation Events	1	Number of violation days	88
	daily		
	weekly		
	monthly		
	quarterly	X	
	semiannual		
	annual		
	single event		

**Violation Base Penalty** \$3,750

One quarterly event is recommended from the December 10, 2018 investigation date to the March 8, 2019 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	

**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** \$211      **Violation Final Penalty Total** \$3,938

**This violation Final Assessed Penalty (adjusted for limits)** \$3,938

## Economic Benefit Worksheet

**Respondent** Rose Bailey  
**Case ID No.** 57394  
**Reg. Ent. Reference No.** RN105843106  
**Media** Waste Tires  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### 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)	\$2,800	2-Jul-2018	2-Jan-2020	1.50	\$211	n/a	\$211

**Notes for DELAYED costs**

Estimated cost to remove all scrap tires (\$5 per tire) from the Site and dispose of them at an authorized facility. The date required is the date the violation was documented, and the final date is the estimated date of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance

\$2,800

**TOTAL**

\$211



# Compliance History Report

Compliance History Report for CN605565464, RN105843106, Rating Year 2018 which includes Compliance History (CH) components from September 1, 2013, through August 31, 2018.

**Customer, Respondent, or Owner/Operator:** CN605565464, Bailey, Rose  
**Classification:** UNCLASSIFIED  
**Rating:** -----

**Regulated Entity:** RN105843106, 604 Bristow Road, Tom Green County  
**Classification:** UNCLASSIFIED  
**Rating:** -----

**Complexity Points:** 0  
**Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 604 Bristow Road, San Angelo, Tom Green County, Texas 76905-8811

**TCEQ Region:** REGION 08 - SAN ANGELO

**ID Number(s):**  
**MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER**  
R08105843106

**Compliance History Period:** September 01, 2013 to August 31, 2018  
**Rating Year:** 2018  
**Rating Date:** 09/01/2018

**Date Compliance History Report Prepared:** March 11, 2019

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** March 11, 2014 to March 11, 2019

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

**Name:** Tyler Gerhardt

**Phone:** (512) 239-2506

## **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

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

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

N/A

### **B. Criminal convictions:**

N/A

### **C. Chronic excessive emissions events:**

N/A

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

N/A

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

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

- 1 Date: 09/10/2018 (1489842)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)  
30 TAC Chapter 330, SubChapter A 330.15(c)  
Description: Failure to comply with the general prohibitions regarding Municipal Solid Waste.

### **F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ROSE BAILEY;  
RN105843106**

§  
§  
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§  
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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2019-0346-MSW-E**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition, filed pursuant to TEX. WATER CODE ch. 7, 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 Rose Bailey (“Respondent”).

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

### **FINDINGS OF FACT**

1. Respondent owns real property located at 604 Bristow Road near San Angelo, Tom Green County, Texas (the “Site”). The Site contains and/or involves the management of municipal solid waste (“MSW”), including scrap tires, as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on June 27 through July 13, 2018, and December 10, 2018, an investigator documented that Respondent caused, suffered, allowed, or permitted the unauthorized disposal of MSW. Specifically, approximately 560 scrap tires had been disposed of at the Site, and approximately 9,378 cubic yards of MSW comprised mainly of brush and tree limbs mixed with carpet scraps, asphalt, shingles, sheet metal, mattresses, furniture, and scrap metal had been disposed of at the Site.
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 Rose Bailey” (the “EDPRP”) in the TCEQ Chief Clerk’s office on October 3, 2019.
4. Respondent filed an answer requesting a hearing on March 24, 2021, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on May 19, 2021.
5. On June 24, 2021, the TCEQ Chief Clerk mailed notice of the July 22, 2021, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.
6. On July 22, 2021, 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.
7. On July 29, 2021, 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. 2 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. HEALTH & SAFETY CODE ch. 361 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, Respondent caused, suffered, allowed, or permitted the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(a) and (c).
3. 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.
4. As evidenced by Finding of Fact No. 5, 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 §§ 155.105(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.
5. As evidenced by Findings of Fact Nos. 6 and 7, 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. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106(b).
6. 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.
7. An administrative penalty in the amount of five thousand two hundred forty-nine dollars (\$5,249.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. 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 five thousand two hundred forty-nine dollars (\$5,249.00) 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: Rose Bailey; Docket No. 2019-0346-MSW-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, cease any additional disposal of MSW and scrap tires at the Site;
  - b. Within 30 days after the effective date of this Order, remove all MSW and scrap tires from the Site and dispose of them at an authorized facility; and
  - 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:

Enforcement Divisions, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and:

Waste Section Manager  
San Angelo Regional Office  
Texas Commission on Environmental Quality  
622 South Oakes Street, Suite K  
San Angelo, Texas 76903-7035

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 Site operations referenced in this Order.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by 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. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
10. 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.
11. 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.



SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

\_\_\_\_\_  
Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



UNSWORN DECLARATION OF TAYLOR PEARSON

“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 Rose Bailey” (the “EDPRP”) was filed in the TCEQ Chief Clerk’s office on October 3, 2019.

Respondent filed an answer requesting a hearing on March 24, 2021, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on May 19, 2021. On June 24, 2021, the TCEQ Chief Clerk mailed notice of the 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 July 22, 2021. 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. 2, issued on July 29, 2021, so that TCEQ may dispose of this case on a default basis.”

"My name is Taylor Wayne Pearson, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Travis County,  
State of Texas,  
on the 11<sup>th</sup> day of May, 2022

A handwritten signature in blue ink that reads "Taylor Pearson".

\_\_\_\_\_  
Declarant