

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 58105
C & D WASTE, LTD. and ZAHN ENTERPRISES, INC.
RN102643368
Docket No. 2019-1128-MSW-E

Order Type:
Agreed Order

Media:
MSW

Small Business:
No

Location(s) Where Violation(s) Occurred:
7702 North Avenue P, Lubbock, Lubbock County

Type of Operation:
type IV landfill

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: December 3, 2021

Comments Received: None

Penalty Information

Total Penalty Assessed: \$11,025

Total Paid to General Revenue: \$11,025

Compliance History Classifications:

Person/CN – Satisfactory (ZAHN ENTERPRISES, INC.); Unclassified (C & D WASTE, LTD.)
Site/RN – Satisfactory (ZAHN ENTERPRISES, INC.); Unclassified (C & D WASTE, LTD.)

Major Source: Yes

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: December 6, 2018 through December 14, 2018

Date(s) of NOV(s): January 25, 2019

Date(s) of NOE(s): August 2, 2019

Violation Information

1. Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste ("MSW"). Specifically, 781,182 cubic yards of construction and demolition debris were disposed of at the Facility in unauthorized areas [30 TEX. ADMIN. CODE § 330.15(c)].
2. Failed to immediately remove and properly dispose of MSW deposited in unauthorized areas of the landfill including waste located outside the permitted boundary, buffer zones, and rights-of-way [30 TEX. ADMIN. CODE §§ 330.133(b), 330.141(a), and 330.543(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 90 days, properly dispose of the 781,182 cubic yards of MSW at an authorized facility.
2. Within 105 days, submit written certification to demonstrate compliance for Technical Requirement No. 1.

Litigation Information

Date Petition(s) Filed: December 14, 2020

Date Green Card(s) Signed: December 17, 2020

SOAH Referral Date: March 23, 2021

Hearing Date(s):

Preliminary hearing: (waived)

Settlement Date: August 18, 2021

Contact Information

TCEQ Attorneys: Casey Kurnath, 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: Stephanie McCurley, Enforcement, (512) 239-2607

TCEQ Regional Contact: Jay Keith, Lubbock Regional Office, (806) 796-7092

Respondent Contact: Kyle Zahn, President, C & D WASTE, LTD. and ZAHN ENTERPRISES, INC.,
181A Pony Express Trail, Lubbock, Texas 79404

Respondent's Attorney: S. Rafe Foreman, Hutchison & Foreman, PLLC, 1312 Texas Avenue, Suite 101,
Lubbock, Texas 79401



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	5-Aug-2019	Screening	5-Aug-2019	EPA Due	
	PCW	4-Jan-2021				

RESPONDENT/FACILITY INFORMATION

Respondent	C & D WASTE, LTD. and ZAHN ENTERPRISES, INC.		
Reg. Ent. Ref. No.	RN102643368		
Facility/Site Region	2-Lubbock	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	58105	No. of Violations	1
Docket No.	2019-1128-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Stephanie McCurley
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	22.0% Adjustment	Subtotals 2, 3, & 7	\$1,650
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Notes: Enhancement for one previous NOV with dissimilar violations and one Order containing a denial of liability.

Culpability	Yes	25.0% Enhancement	Subtotal 4	\$1,875
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Notes: Respondents failed to complete the requirements of a compliance agreement (Effective July 2, 2009 Enforcement Case No. 34447) resulting in this enforcement action.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$3,989
 Estimated Cost of Compliance: \$88,771
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,025
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$11,025

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,025
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes:

No deferral due to culpability.

PAYABLE PENALTY	\$11,025
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Screening Date 5-Aug-2019**Docket No.** 2019-1128-MSW-E**PCW****Respondent** C & D WASTE, LTD. and ZAHN ENTERPRISES, INC.

Policy Revision 4 (April 2014)

Case ID No. 58105

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102643368**Media** Municipal Solid Waste**Enf. Coordinator** Stephanie McCurley**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>)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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) 22%**>> Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%**>> Compliance History Person Classification (Subtotal 7)**

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%**>> Compliance History Summary****Compliance History Notes**

Enhancement for one previous NOV with dissimilar violations and one Order containing a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 22%**>> Final Compliance History Adjustment****Final Adjustment Percentage *capped at 100%** 22%

Screening Date 5-Aug-2019 **Docket No.** 2019-1128-MSW-E **PCW**
Respondent C & D WASTE, LTD. and ZAHN ENTERPRISES, INC. *Policy Revision 4 (April 2014)*
Case ID No. 58105 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN102643368
Media Municipal Solid Waste
Enf. Coordinator Stephanie McCurley

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 330.15(c), 330.133(b), 330.141(a), and 330.543(a)

Violation Description Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste ("MSW"). Also, failed to immediately remove and properly dispose of MSW deposited in unauthorized areas of the landfill including waste located outside the permitted boundary, buffer zones, and rights-of-way. Specifically, 781,182 cubic yards of construction and demolition debris were disposed of at the Facility in unauthorized areas.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual		x	
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1 28 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

One monthly event is recommended from the July 8, 2019 record review date to the August 5, 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 Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$3,989 **Violation Final Penalty Total** \$11,025

This violation Final Assessed Penalty (adjusted for limits) \$11,025

Economic Benefit Worksheet

Respondent C & D WASTE, LTD. and ZAHN ENTERPRISES, INC.
Case ID No. 58105
Reg. Ent. Reference No. RN102643368
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	\$88,771	8-Jul-2019	31-May-2020	0.90	\$3,989	n/a	\$3,989
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated delayed cost to properly dispose of the 781,182 cubic yards of MSW at an authorized facility. The Date Required is the record review date 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

\$88,771

TOTAL

\$3,989

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Compliance History Report

Compliance History Report for CN601346588, RN102643368, Rating Year 2019 which includes Compliance History (CH) components from September 1, 2014, through August 31, 2019.

Customer, Respondent, or Owner/Operator: CN601346588, C & D WASTE, LTD. **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN102643368, C & D Waste Landfill **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 8 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 7702 North Avenue P in Lubbock, Lubbock County, Texas

TCEQ Region: REGION 02 - LUBBOCK

ID Number(s):
MUNICIPAL SOLID WASTE DISPOSAL PERMIT 2297 **MUNICIPAL SOLID WASTE DISPOSAL PERMIT 2323**
STORMWATER PERMIT TXR15547L **AIR NEW SOURCE PERMITS REGISTRATION 100765**
AGGREGATES REGISTRATION AP0002616 **PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 87100**

Compliance History Period: September 01, 2014 to August 31, 2019 **Rating Year:** 2019 **Rating Date:** 09/01/2019

Date Compliance History Report Prepared: January 22, 2020

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 22, 2015 to January 22, 2020

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

Name: Stephanie McCurley **Phone:** (512) 239-2607

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:

- 1 Effective Date: 03/14/2017 ADMINORDER 2015-1124-MSW-E (1660 Order-Agreed Order With Denial)
 Classification: Moderate
 Citation: 30 TAC Chapter 330, SubChapter D 330.165(a)
 30 TAC Chapter 330, SubChapter D 330.165(b)
 Description: Failure to provide adequate weekly cover for a Type IV landfill, in violation of 30 TEX. ADMIN. CODE §330.165(a) and (b), as documented during an investigation conducted on June 2, 2015. Specifically, C & D waste and brush were observed protruding from the current cover along the southern slopes near the tree limb recycling area.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

- Item 2 December 08, 2016 (1377933)
- Item 3 February 14, 2019 (1540028)
- Item 4 May 23, 2019 (1558415)
- Item 5 November 21, 2019 (1610826)

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: 01/25/2019 (1538320)
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 328, SubChapter F 328.54(c)
 Description: Failure to prevent the storage of used/scrap tires on the ground in excess of 500.

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

Component Appendices

Appendix A

All NOVs Issued During Component Period 1/22/2015 and 1/22/2020

1 Date: 10/21/2015 (1286484)
 Classification: Moderate
 Self Report? NO For Informational Purposes Only
 Citation: 30 TAC Chapter 330, SubChapter A 330.15(d)
 Description: Failure of the RE prevent the open burning of solid waste at an MSW landfill, in violation of 30 TAC §330.15(d). The investigators observed smoke emitting from the ground in multiple locations across the disposal area. It was confirmed that the active disposal area was on fire and burning beneath the surface.
 Classification: Moderate

Self Report? NO For Informational Purposes Only
 Citation: 30 TAC Chapter 330, SubChapter D 330.129
 Description: Failure of the RE to comply with the Fire Protection Plan included in the Site Operating Plan (SOP). It was observed that smoke was emitting from the ground in multiple locations across the disposal area. Mr. Casey Johnson, Operations Manager of C&D Waste Landfill, explained that the subsurface fire started in July 2015 and has continued to burn since then.

2 Date: 12/20/2017 (1460828)
 Classification: Moderate
 Self Report? NO For Informational Purposes Only
 Citation: 30 TAC Chapter 330, SubChapter F 330.133(g)
 SOP PART IV SECTION 21.0 PERMIT
 Description: Failure of the Regulated Entity to prevent the acceptance of waste received in enclosed containers or enclosed vehicles.

3 Date: 06/12/2018 (1490196)
 Classification: Moderate
 Self Report? NO For Informational Purposes Only
 Citation: 30 TAC Chapter 330, SubChapter D 330.121(a)
 Description: Failure to comply with the Site Development Plan for exceeding the maximum waste disposal elevation.

4* Date: 01/25/2019 (1538320)

Classification: Minor

Self Report? NO For Informational Purposes Only
 Citation: 30 TAC Chapter 328, SubChapter F 328.54(c)
 Description: Failure to prevent the storage of used/scrap tires on the ground in excess of 500.

* NOVs applicable for the Compliance History rating period 9/1/2014 to 8/31/2019

Appendix B

All Investigations Conducted During Component Period January 22, 2015 and January 22, 2020

		(1259407)	
Item 1	June 29, 2015**	For Informational Purposes Only	
		(1295561)	
Item 2	December 16, 2015**	For Informational Purposes Only	
		(1351513)	
Item 3	August 11, 2016**	For Informational Purposes Only	
		(1377933)	
Item 4*	December 08, 2016**	For Informational Purposes Only	
		(1460828)	
Item 5	January 12, 2018**	For Informational Purposes Only	
		(1490196)	
Item 6	June 12, 2018**	For Informational Purposes Only	
		(1538320)	
Item 7	January 23, 2019**	For Informational Purposes Only	
		(1540028)	
Item 8*	February 14, 2019**	For Informational Purposes Only	
		(1558415)	
Item 9*	May 23, 2019**	For Informational Purposes Only	
		(1558148)	
Item 10	May 30, 2019**	For Informational Purposes Only	
		(1553669)	
Item 11	August 01, 2019**	For Informational Purposes Only	
		(1610826)	
Item 12*	November 21, 2019	For Informational Purposes Only	

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2014 and 08/31/2019.

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Compliance History Report

Compliance History Report for CN601346463, RN102643368, Rating Year 2019 which includes Compliance History (CH) components from September 1, 2014, through August 31, 2019.

Customer, Respondent, or Owner/Operator: CN601346463, ZAHN ENTERPRISES, INC. **Classification:** SATISFACTORY **Rating:** 3.86

Regulated Entity: RN102643368, C & D Waste Landfill **Classification:** SATISFACTORY **Rating:** 3.86

Complexity Points: 8 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 7702 North Avenue P in Lubbock, Lubbock County, Texas

TCEQ Region: REGION 02 - LUBBOCK

ID Number(s):

MUNICIPAL SOLID WASTE DISPOSAL PERMIT 2297
STORMWATER PERMIT TXR15547L
AGGREGATES REGISTRATION AP0002616

MUNICIPAL SOLID WASTE DISPOSAL PERMIT 2323
AIR NEW SOURCE PERMITS REGISTRATION 100765
PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 87100

Compliance History Period: September 01, 2014 to August 31, 2019 **Rating Year:** 2019 **Rating Date:** 09/01/2019

Date Compliance History Report Prepared: January 22, 2020

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 22, 2015 to January 22, 2020

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

Name: Stephanie McCurley

Phone: (512) 239-2607

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:

- 1 Effective Date: 03/14/2017 ADMINORDER 2015-1124-MSW-E (1660 Order-Agreed Order With Denial)

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter D 330.165(a)

30 TAC Chapter 330, SubChapter D 330.165(b)

Description: Failure to provide adequate weekly cover for a Type IV landfill, in violation of 30 TEX. ADMIN. CODE §330.165(a) and (b), as documented during an investigation conducted on June 2, 2015. Specifically, C & D waste and brush were observed protruding from the current cover along the southern slopes near the tree limb recycling area.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 2	December 08, 2016	(1377933)
Item 3	February 14, 2019	(1540028)
Item 4	May 23, 2019	(1558415)
Item 5	November 21, 2019	(1610826)

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: 01/25/2019 (1538320) Classification: Minor
 Self Report? NO
 Citation: 30 TAC Chapter 328, SubChapter F 328.54(c)
 Description: Failure to prevent the storage of used/scrap tires on the ground in excess of 500.

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

Component Appendices

Appendix A

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 Classification: Moderate

Self Report? NO For Informational Purposes Only
 Citation: 30 TAC Chapter 330, SubChapter D 330.129
 Description: Failure of the RE to comply with the Fire Protection Plan included in the Site Operating Plan (SOP). It was observed that smoke was emitting from the ground in multiple locations across the disposal area. Mr. Casey Johnson, Operations Manager of C&D Waste Landfill, explained that the subsurface fire started in July 2015 and has continued to burn since then.

2 Date: 12/20/2017 (1460828) Classification: Moderate
 Self Report? NO For Informational Purposes Only
 Citation: 30 TAC Chapter 330, SubChapter F 330.133(g)
 SOP PART IV SECTION 21.0 PERMIT
 Description: Failure of the Regulated Entity to prevent the acceptance of waste received in enclosed containers or enclosed vehicles.

3 Date: 06/12/2018 (1490196) Classification: Moderate
 Self Report? NO For Informational Purposes Only
 Citation: 30 TAC Chapter 330, SubChapter D 330.121(a)
 Description: Failure to comply with the Site Development Plan for exceeding the maximum waste disposal elevation.

4* Date: 01/25/2019 (1538320)

Classification: Minor

Self Report? NO

For Informational Purposes Only

Citation: 30 TAC Chapter 328, SubChapter F 328.54(c)

Description: Failure to prevent the storage of used/scrap tires on the ground in excess of 500.

* NOVs applicable for the Compliance History rating period 9/1/2014 to 8/31/2019

Appendix B

All Investigations Conducted During Component Period January 22, 2015 and January 22, 2020

- Item 1 June 29, 2015** (1259407) For Informational Purposes Only
- Item 2 December 16, 2015** (1295561) For Informational Purposes Only
- Item 3 August 11, 2016** (1351513) For Informational Purposes Only
- Item 4* December 08, 2016** (1377933) For Informational Purposes Only
- Item 5 January 12, 2018** (1460828) For Informational Purposes Only
- Item 6 June 12, 2018** (1490196) For Informational Purposes Only
- Item 7 January 23, 2019** (1538320) For Informational Purposes Only
- Item 8* February 14, 2019** (1540028) For Informational Purposes Only
- Item 9* May 23, 2019** (1558415) For Informational Purposes Only
- Item 10 May 30, 2019** (1558148) For Informational Purposes Only
- Item 11 August 01, 2019** (1553669) For Informational Purposes Only
- Item 12* November 21, 2019 (1610826) For Informational Purposes Only

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2014 and 08/31/2019.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN ENFORCEMENT
ACTION CONCERNING
C & D WASTE, LTD. AND ZAHN
ENTERPRISES, INC.;
RN102643368

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER

DOCKET NO. 2019-1128-MSW-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding C & D WASTE, LTD. and ZAHN ENTERPRISES, INC. (collectively "Respondents") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondents, represented by S. Rafe Foreman of the law firm Hutchison & Foreman, PLLC, together stipulate that:

1. Respondents own and operate a Type IV landfill located at 7702 North Avenue P in Lubbock, Lubbock County, Texas (the "Facility"). The Facility involves or involved the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. The Executive Director and Respondents agree that TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that Respondents are subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of eleven thousand twenty-five dollars (\$11,025.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondents paid eleven thousand twenty-five dollars (\$11,025.00) of the penalty.
5. The Executive Director and Respondents agree on a settlement of the matters addressed in this Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions contained in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. 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.
8. This Order shall terminate five years from its effective date or upon full compliance with

all the terms and conditions set forth in this Order, whichever is later.

II. ALLEGATIONS

1. After an investigation conducted from December 6, 2018, through December 14, 2018, and a record review conducted from July 8, 2019, through July 12, 2019, TCEQ staff documented that Respondents:
 - a. Caused, suffered, allowed, or permitted the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c). Specifically, 781,182 cubic yards of construction and demolition debris were disposed of at the Facility in unauthorized areas; and
 - b. Failed to immediately remove and properly dispose of MSW deposited in unauthorized areas of the landfill including waste located outside the permitted boundary, buffer zones, and rights-of-way, in violation of 30 TEX. ADMIN. CODE §§ 330.133(b), 330.141(a), and 330.543(a).

III. DENIALS

Respondents generally deny each Allegation in Section II.

IV. ORDERING PROVISIONS

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

1. Respondents are assessed an administrative penalty as set forth in Section I, Paragraph 4. The payment of this penalty and Respondents' compliance with all of the requirements set forth in this Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
2. Respondents shall undertake the following technical requirements:
 - a. Within 90 days after the effective date of this Order, properly dispose of the 781,182 cubic yards of MSW at an authorized facility; and
 - b. Within 105 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be signed by the Respondents and shall include the following certification language:

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

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

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

and:

Waste Section Manager
Lubbock Regional Office
Texas Commission on Environmental Quality
5012 50th Street, Suite 100
Lubbock, Texas 79414-3426

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon each Respondent. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive 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.
6. If Respondents fail 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, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. This Order, issued by the Commission, shall not be admissible against Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE (1 of 2)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

Erin E. Chanallop

For the Executive Director

01/26/22

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this Order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.

Kyle Zahn

Signature - Kyle Zahn, President
ZAHN ENTERPRISES, INC.
181 A PONY EXPRESS TRAIL
Lubbock, Texas 79404

12-7-21

Date



Melinda Rechkemmer
Notary Public
State of Texas
My Commission expires 1-10-2022

SIGNATURE PAGE (2 of 2)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

Erin E. Chanallop

01/26/22

For the Executive Director

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.

Signature

Date

Kyle Zahn

8-18-21

Name (Printed or typed)
Authorized representative of
C & D WASTE, LTD.

Title

President