

Billy Kizer
 RN110583598 & RN110880457
 Docket No. 2020-0083-MSW-E

Order Type:
 Agreed Order

Media:
 MSW

Small Business:
 Yes

Location(s) Where Violation(s) Occurred:

On properties located on County Road 2620, approximately 300 feet south of the intersection of County Road 2620 and Farm-to-Market Road 1396, Ivanhoe, Fannin County (the “Northern Property”); and 297 County Road 2620, Ivanhoe, Fannin County (the “Southern Property”)

Type of Operation:
 scrapyard facility

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: \$20,850

Deferred for Financial Inability to Pay: \$17,250

Total Paid to General Revenue: \$100

Total Due to General Revenue: \$3,500

Payment Plan: 35 payments of \$100 each

Compliance History Classifications:

Person/CN - SATISFACTORY (CN605599240);
 Site/RN - SATISFACTORY (RN110583598); N/A (RN110880457)

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): October 26, 2018

Date(s) of Investigation: November 14, 2018; June 4, 2019; January 17, 2020

Date(s) of NOV(s): January 11, 2019

Date(s) of NOE(s): August 23, 2019

Billy Kizer
RN110583598 & RN110880457
Docket No. 2020-0083-MSW-E

Violation Information

1. Caused, suffered, allowed, or permitted the collection, storage, transportation, processing, or disposal of MSW. Specifically, approximately 8,238 cubic yards of MSW consisting of, but not limited to, aluminum cans, abandoned car bodies, recreational equipment, and abandoned vehicles, storage tanks, air conditioning units and vents, and scrap household appliances were stored at the Northern Property [30 TEX. ADMIN. CODE § 330.15(a) and (c)].
2. Caused, suffered, allowed, or permitted the collection, storage, transportation, processing, or disposal of MSW. Specifically, approximately 23,872 cubic yards of MSW consisting of, but not limited to, aluminum cans, abandoned car bodies, recreational equipment, and abandoned vehicles, storage tanks, air conditioning units and vents, and scrap household appliances were stored at the Southern Property [30 TEX. ADMIN. CODE § 330.15(a) and (c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately cease accepting any additional unauthorized MSW at the Facility.
2. Within 60 days, remove all MSW from the Facility and dispose of it at an authorized facility.
3. Within 75 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1 and 2.

Litigation Information

Date Petition(s) Filed: March 26, 2021
Date Answer(s) Filed: April 22, 2021
SOAH Referral Date: June 18, 2021
Hearing Date(s):
Preliminary hearing: September 2, 2021 (Waived)
Evidentiary hearing: June 23, 2022 (Scheduled)
Settlement Date: June 16, 2022

Contact Information

TCEQ Attorneys: Jess Robinson, 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: John Fennell, Enforcement Division, (512) 239-2616
TCEQ Regional Contact: Erin Gorman, Dallas/Fort Worth Regional Office, (817) 588-5800
Respondent Contact: Billy Kizer, 811 South 5th Street, Bonham, Texas 75418
Respondent's Attorney: Christie M. Phan, P.O. Box 1152, Coppell, Texas 75019



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned | 21-Jan-2020 | Screening | 21-Jan-2020 | EPA Due | |
| | PCW | 24-Nov-2020 | | | | |

RESPONDENT/FACILITY INFORMATION

| | | | | | |
|-----------------------------|---------------------|---------------------------|-------|--|--|
| Respondent | Billy Kizer | | | | |
| Reg. Ent. Ref. No. | RN110880457 | | | | |
| Facility/Site Region | 4-Dallas/Fort Worth | Major/Minor Source | Minor | | |

CASE INFORMATION

| | | | |
|--|-----------------------|------------------------------|--------------------|
| Enf./Case ID No. | 58298 | No. of Violations | 1 |
| Docket No. | 2020-0083-MSW-E | Order Type | 1660 |
| Media Program(s) | Municipal Solid Waste | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | John Fennell |
| | | 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 | \$3,750 |
|---|-------------------|----------------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|------------------------|--------------------------------|------------|
| Compliance History | 0.0% Adjustment | Subtotals 2, 3, & 7 | \$0 |
|---------------------------|------------------------|--------------------------------|------------|

| | |
|--------------|---------------------------------------|
| Notes | No adjustment for compliance history. |
|--------------|---------------------------------------|

| | | | | |
|--------------------|----|-------------------------|-------------------|------------|
| Culpability | No | 0.0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|-------------------------|-------------------|------------|

| | |
|--------------|--|
| Notes | The Respondent does not meet the culpability criteria. |
|--------------|--|

| | | |
|--|-------------------|------------|
| Good Faith Effort to Comply Total Adjustments | Subtotal 5 | \$0 |
|--|-------------------|------------|

| | | | |
|-------------------------|--------------------------|-------------------|------------|
| Economic Benefit | 0.0% Enhancement* | Subtotal 6 | \$0 |
|-------------------------|--------------------------|-------------------|------------|

| | | |
|------------------------------|----------|-----------------------------------|
| Total EB Amounts | \$4,445 | *Capped at the Total EB \$ Amount |
| Estimated Cost of Compliance | \$74,938 | |

| | | |
|-----------------------------|-----------------------|----------------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$3,750 |
|-----------------------------|-----------------------|----------------|

| | | |
|---|------------------------|------------|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 0.0% Adjustment | \$0 |
|---|------------------------|------------|

Reduces or enhances the Final Subtotal by the indicated percentage.

| | |
|--------------|--|
| Notes | |
|--------------|--|

| | |
|-----------------------------|----------------|
| Final Penalty Amount | \$3,750 |
|-----------------------------|----------------|

| | | |
|-----------------------------------|-------------------------------|----------------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$3,750 |
|-----------------------------------|-------------------------------|----------------|

| | | |
|-----------------|----------------------------------|------------|
| DEFERRAL | 0.0% Reduction Adjustment | \$0 |
|-----------------|----------------------------------|------------|

Reduces the Final Assessed Penalty by the indicated percentage.

| | |
|--------------|--|
| Notes | Deferral not offered for non-expedited settlement. |
|--------------|--|

| | |
|------------------------|----------------|
| PAYABLE PENALTY | \$3,750 |
|------------------------|----------------|

| | | | | |
|--------------------------------|-----------------------|-------------------|-----------------|---------------------------------------|
| Screening Date | 21-Jan-2020 | Docket No. | 2020-0083-MSW-E | PCW |
| Respondent | Billy Kizer | | | <i>Policy Revision 4 (April 2014)</i> |
| Case ID No. | 58298 | | | <i>PCW Revision March 26, 2014</i> |
| Reg. Ent. Reference No. | RN110880457 | | | |
| Media | Municipal Solid Waste | | | |
| Enf. Coordinator | John Fennell | | | |

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 | 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) 0%

>> **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 No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 0%

| | | |
|--|-----------------------------------|---------------------------------------|
| Screening Date 21-Jan-2020 | Docket No. 2020-0083-MSW-E | PCW |
| Respondent Billy Kizer | | <i>Policy Revision 4 (April 2014)</i> |
| Case ID No. 58298 | | <i>PCW Revision March 26, 2014</i> |
| Reg. Ent. Reference No. RN110880457 | | |
| Media Municipal Solid Waste | | |
| Enf. Coordinator John Fennell | | |

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

| | | Harm | | | |
|-----------|-----------|----------------------|---|----------------------|---|
| | | Major | Moderate | Minor | |
| OR | Actual | <input type="text"/> | <input checked="" type="text" value="x"/> | <input type="text"/> | Percent <input type="text" value="15.0%"/> |
| | Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> | |

>> Programmatic Matrix

| | Falsification | Major | Moderate | Minor | |
|--|----------------------|----------------------|----------------------|----------------------|--|
| | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | Percent <input type="text" value="0.0%"/> |

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

| | |
|--------------|---|
| daily | <input type="text"/> |
| weekly | <input type="text"/> |
| monthly | <input checked="" type="text" value="x"/> |
| quarterly | <input type="text"/> |
| semiannual | <input type="text"/> |
| annual | <input type="text"/> |
| single event | <input type="text"/> |

Violation Base Penalty

Good Faith Efforts to Comply Reduction

| | Before NOE/NOV | NOE/NOV to EDPRP/Settlement Offer |
|---------------|---|-----------------------------------|
| Extraordinary | <input type="text"/> | <input type="text"/> |
| Ordinary | <input type="text"/> | <input type="text"/> |
| N/A | <input checked="" type="text" value="x"/> | <input type="text"/> |

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 Billy Kizer
Case ID No. 58298
Reg. Ent. Reference No. RN110880457
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 |
|------------------|-----------|---------------|------------|-----|----------------|-------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|-------------|-----------|

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 | \$74,938 | 14-Nov-2018 | 21-Jan-2020 | 1.19 | \$4,445 | n/a | \$4,445 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to dispose of approximately 8,238 cubic yards of MSW. The Date Required is the initial investigation date, and the Final Date is the estimated compliance date.

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

\$74,938

TOTAL

\$4,445



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned | 26-Aug-2019 | Screening | 29-Aug-2019 | EPA Due | |
| | PCW | 22-Jul-2020 | | | | |

RESPONDENT/FACILITY INFORMATION

| | | | | | |
|-----------------------------|---------------------|---------------------------|-------|--|--|
| Respondent | Billy Kizer | | | | |
| Reg. Ent. Ref. No. | RN110583598 | | | | |
| Facility/Site Region | 4-Dallas/Fort Worth | Major/Minor Source | Minor | | |

CASE INFORMATION

| | | | |
|--|-----------------------|------------------------------|--------------------|
| Enf./Case ID No. | 58298 | No. of Violations | 1 |
| Docket No. | 2020-0083-MSW-E | Order Type | 1660 |
| Media Program(s) | Municipal Solid Waste | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | John Fennell |
| | | 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 | \$11,250 |
|---|-------------------|-----------------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|------------------------|--------------------------------|--------------|
| Compliance History | 2.0% Adjustment | Subtotals 2, 3, & 7 | \$225 |
|---------------------------|------------------------|--------------------------------|--------------|

| | |
|--------------|--|
| Notes | Enhancement for one NOV with dissimilar violation. |
|--------------|--|

| | | | | |
|--------------------|----|-------------------------|-------------------|------------|
| Culpability | No | 0.0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|-------------------------|-------------------|------------|

| | |
|--------------|--|
| Notes | The Respondent does not meet the culpability criteria. |
|--------------|--|

| | | |
|--|-------------------|------------|
| Good Faith Effort to Comply Total Adjustments | Subtotal 5 | \$0 |
|--|-------------------|------------|

| | | | |
|-------------------------|---------------------------|-------------------|----------------|
| Economic Benefit | 50.0% Enhancement* | Subtotal 6 | \$5,625 |
|-------------------------|---------------------------|-------------------|----------------|

| | | |
|------------------------------|-----------|-----------------------------------|
| Total EB Amounts | \$20,585 | *Capped at the Total EB \$ Amount |
| Estimated Cost of Compliance | \$216,218 | |

| | | |
|-----------------------------|-----------------------|-----------------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$17,100 |
|-----------------------------|-----------------------|-----------------|

| | | |
|---|------------------------|------------|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 0.0% Adjustment | \$0 |
|---|------------------------|------------|

Reduces or enhances the Final Subtotal by the indicated percentage.

| | |
|--------------|--|
| Notes | |
|--------------|--|

| | |
|-----------------------------|-----------------|
| Final Penalty Amount | \$17,100 |
|-----------------------------|-----------------|

| | | |
|-----------------------------------|-------------------------------|-----------------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$17,100 |
|-----------------------------------|-------------------------------|-----------------|

| | | |
|-----------------|----------------------------------|------------|
| DEFERRAL | 0.0% Reduction Adjustment | \$0 |
|-----------------|----------------------------------|------------|

Reduces the Final Assessed Penalty by the indicated percentage.

| | |
|--------------|--|
| Notes | Deferral not offered for non-expedited settlement. |
|--------------|--|

| | |
|------------------------|-----------------|
| PAYABLE PENALTY | \$17,100 |
|------------------------|-----------------|

| | | | | |
|--------------------------------|-----------------------|-------------------|-----------------|---------------------------------------|
| Screening Date | 29-Aug-2019 | Docket No. | 2020-0083-MSW-E | PCW |
| Respondent | Billy Kizer | | | <i>Policy Revision 4 (April 2014)</i> |
| Case ID No. | 58298 | | | <i>PCW Revision March 26, 2014</i> |
| Reg. Ent. Reference No. | RN110583598 | | | |
| Media | Municipal Solid Waste | | | |
| Enf. Coordinator | John Fennell | | | |

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>) | 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) 2%

>> 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 NOV with dissimilar violation.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 2%

| | | |
|--|-----------------------------------|--------------------------------|
| Screening Date 29-Aug-2019 | Docket No. 2020-0083-MSW-E | PCW |
| Respondent Billy Kizer | | Policy Revision 4 (April 2014) |
| Case ID No. 58298 | | PCW Revision March 26, 2014 |
| Reg. Ent. Reference No. RN110583598 | | |
| Media Municipal Solid Waste | | |
| Enf. Coordinator John Fennell | | |

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

| | | Harm | | | |
|-----------|-----------|----------------------|---|----------------------|---|
| | | Major | Moderate | Minor | |
| OR | Actual | <input type="text"/> | <input checked="" type="text" value="x"/> | <input type="text"/> | Percent <input type="text" value="15.0%"/> |
| | Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> | |

>> Programmatic Matrix

| | Falsification | Major | Moderate | Minor | |
|--|----------------------|----------------------|----------------------|----------------------|--|
| | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | Percent <input type="text" value="0.0%"/> |

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

| | |
|--------------|---|
| daily | <input type="text"/> |
| weekly | <input type="text"/> |
| monthly | <input checked="" type="text" value="x"/> |
| quarterly | <input type="text"/> |
| semiannual | <input type="text"/> |
| annual | <input type="text"/> |
| single event | <input type="text"/> |

Violation Base Penalty

Three monthly events are recommended from the June 4, 2019 investigation date to the September 5, 2019 screening date.

Good Faith Efforts to Comply Reduction

| | Before NOE/NOV | NOE/NOV to EDPRP/Settlement Offer |
|---------------|---|-----------------------------------|
| Extraordinary | <input type="text"/> | <input type="text"/> |
| Ordinary | <input type="text"/> | <input type="text"/> |
| N/A | <input checked="" type="text" value="x"/> | <input type="text"/> |

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 Billy Kizer
Case ID No. 58298
Reg. Ent. Reference No. RN110583598
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 |
|------------------|-----------|---------------|------------|-----|----------------|-------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|-------------|-----------|

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 | \$216,218 | 14-Nov-2018 | 9-Oct-2020 | 1.90 | \$20,585 | n/a | \$20,585 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to dispose of approximately 23,872 cubic yards of MSW. The Date Required is the initial investigation date, and the Final Date is the estimated compliance date.

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

\$216,218

TOTAL

\$20,585

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

Compliance History Report for CN605599240, RN110880457, Rating Year 2019 which includes Compliance History (CH) components from September 1, 2014, through August 31, 2019.

Customer, Respondent, or Owner/Operator: CN605599240, KIZER, BILLY **Classification:** SATISFACTORY **Rating:** 7.33

Regulated Entity: RN110880457, FANNIN CAD PROPERTY ID 84870 **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: On CR 2620 approximately 300 feet to the south from the intersection of CR2620 and FM1396 FANNIN, TX, FANNIN COUNTY

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s): **MUNICIPAL SOLID WASTE NON PERMITTED** ID NUMBER R04110880457

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

Date Compliance History Report Prepared: April 30, 2020

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 30, 2015 to April 30, 2020

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: John Fennell **Phone:** (512) 239-2616

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 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.

N/A

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

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

Compliance History Report for CN605599240, RN110583598, Rating Year 2019 which includes Compliance History (CH) components from September 1, 2014, through August 31, 2019.

Customer, Respondent, or Owner/Operator: CN605599240, Kizer, Billy **Classification:** SATISFACTORY **Rating:** 7.33

Regulated Entity: RN110583598, Fannin CAD Property ID 100710 **Classification:** SATISFACTORY **Rating:** 6.00

Complexity Points: 2 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 297 COUNTY ROAD 2620 IVANHOE, FANNIN COUNTY, TEXAS 75447-4607

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s): **WATER QUALITY NON PERMITTED** ID NUMBER R04110583598
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R04110583598
STORMWATER PERMIT TXR05EI39

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

Date Compliance History Report Prepared: April 22, 2020

Agency Decision Requiring Compliance History: Enforcement

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

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

Name: John Fennell

Phone: (512) 239-2616

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
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: 05/07/2019 (1557425)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Description: Failure to obtain stormwater discharge authorization.

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
BILLY KIZER;
RN110583598 & RN110880457

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER

DOCKET NO. 2020-0083-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 Billy Kizer (“Respondent”) 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 Respondent, represented by Christie M. Phan, together stipulate that:

1. Respondent owns or operates a scrapyard facility located on two adjacent properties (collectively, the “Facility”), which contains and/or involves the management of materials that the TCEQ observed to be municipal solid waste (“MSW”), as defined in TEX. HEALTH & SAFETY CODE ch. 361:
 - a. The northern property is located on County Road 2620, approximately 300 feet south of the intersection of County Road 2620 and Farm-to-Market Road 1396 in Ivanhoe, Fannin County, Texas (the “Northern Property”);¹ and
 - b. The southern property is located at 297 County Road 2620 in Ivanhoe, Fannin County, Texas (the “Southern Property”).²
2. The Executive Director and Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that Respondent is subject to the 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 Respondent of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
4. An administrative penalty in the amount of twenty thousand eight hundred fifty dollars (\$20,850.00) is assessed by the Commission in settlement of the violations alleged in Section II. The Revenue Operations Section of TCEQ’s Financial Administration Division reviewed the financial documentation submitted by Respondent and determined Respondent is unable to pay all or part of the penalty. Therefore, seventeen thousand two hundred fifty dollars (\$17,250.00) of the penalty is deferred contingent upon Respondent’s timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions contained in this Order.

Respondent paid one hundred dollars (\$100.00) of the three thousand six hundred dollar (\$3,600.00) undeferred penalty. The remaining amount of three thousand five hundred

¹ The Fannin County Appraisal District identifies the Northern Property with Identification No. 84870 and reflects its legal description to be: “A1147 J WINDLE, ACRES 2., LIFE ESTATE.”

² The Fannin County Appraisal District identifies the Southern Property with Identification No. 100710 and reflects its legal description to be: “A1147 J WINDLE, ACRES 3.0.”

dollars (\$3,500.00) of the undeferred penalty shall be paid in thirty-five (35) monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms and conditions of this Order and the Executive Director may demand payment of all or part of the deferred penalty amount.

5. The Executive Director and Respondent 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 Respondent has 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. During an investigation conducted on June 4, 2019, and a record review conducted on January 17, 2020, an investigator documented that Respondent caused, suffered, allowed, or permitted the collection, storage, transportation, processing, or disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(a) and (c). Specifically, approximately 8,238 cubic yards of MSW consisting of, but not limited to, aluminum cans, abandoned car bodies, recreational equipment, and abandoned vehicles, storage tanks, air conditioning units and vents, and scrap household appliances were stored at the Northern Property.
2. During an investigation conducted on June 4, 2019, and a record review conducted on January 17, 2020, an investigator documented that Respondent caused, suffered, allowed, or permitted the collection, storage, transportation, processing, or disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(a) and (c). Specifically, approximately 23,872 cubic yards of MSW consisting of, but not limited to, aluminum cans, abandoned car bodies, recreational equipment, and abandoned vehicles, storage tanks, air conditioning units and vents, and scrap household appliances were stored at the Southern Property.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Section I, Paragraph 4. The payment of this penalty and Respondent's compliance with all 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 not raised here. Penalty payments shall be made payable to the TCEQ and shall be sent with the notation "Re: Billy Kizer, Docket No. 2020-0083-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

2. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, cease accepting any additional unauthorized MSW at the Facility.
 - b. Within 60 days after the effective date of this Order, remove all MSW from the Facility and dispose of it at an authorized facility.
 - c. Within 75 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provisions Nos. 2.a. and 2.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 based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

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 Respondent. Respondent is ordered to give notice of this Order to any 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 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.
6. 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.
 7. This Order, issued by the Commission, shall not be admissible against Respondent 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 the 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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

6/20/22

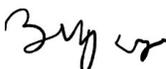
Date

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
- The 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 - Billy Kizer
811 South 5th Street
Bonham, Texas 75418

06 / 16 / 2022

Date

If mailing address has changed, please check this box and provide the new address below:
