

Linda Mosbacker
 RN109492223
 Docket No. 2020-1350-MLM-E

Order Type:
 Default Order

Media:
 MSW and AIR

Small Business:
 N/A

Location(s) Where Violation(s) Occurred:
 410 Our Road, Shepherd, San Jacinto County (the “Site”)

Type of Operation:
 unauthorized municipal solid waste disposal site

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	\$4,375 (2018-0478-MLM-E)
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: March 4, 2022

Comments Received: None

Penalty Information

Total Penalty Assessed: \$118,705

Total Paid to General Revenue: \$0.00

Total Due to General Revenue: \$118,705

Compliance History Classifications:

Person/CN - Unsatisfactory
 Site/RN - Unsatisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: July 21, 2020

Date(s) of NOV(s): N/A

Date(s) of NOE(s): October 8, 2020

Linda Mosbacker
RN109492223
Docket No. 2020-1350-MLM-E

Violation Information

1. Caused, suffered, allowed, or permitted outdoor burning within the State of Texas [TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 111.201, and TCEQ Agreed Order Docket No. 2018-0478-MLM-E, Ordering Provision No. 2.a.i.].
2. Caused, suffered, allowed, or permitted the collection, storage, processing, or disposal of MSW, [30 TEX. ADMIN. CODE § 330.15(a) and (c) and TCEQ Agreed Order Docket No. 2018-0478-MLM-E, Ordering Provision No. 2.b.i.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately cease disposing and burning of any additional MSW at the Site.
2. Within 30 days, remove all MSW, including scrap tires, from the Site and dispose of it at an authorized facility.
3. Within 90 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1 and 2.

Litigation Information

Date Petition(s) Filed: October 29, 2021
Date Green Card(s) Signed: November 2, 2021
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: John S. Mercurief II, 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: Alain Elegbe, Enforcement, (512) 239-6924
TCEQ Regional Contact: Charlie Adams, Beaumont Regional Office, (409) 889-3838
Respondent Contact: Linda Mosbacker, 18226 Enchanted Rock Trail, Humble, Texas 77346
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	10-Oct-2020	Screening	12-Oct-2020	EPA Due	
	PCW	21-Jul-2021				

RESPONDENT/FACILITY INFORMATION	
Respondent	Linda Mosbacker
Reg. Ent. Ref. No.	RN109492223
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	1
Enf./Case ID No.	55789	Order Type	Findings
Docket No.	2020-1350-MLM-E	Government/Non-Profit	No
Media Program(s)	Air	Enf. Coordinator	Alain Elegbe
Multi-Media	Waste Tires and Municipal Solid Waste	EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,250
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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	30.0% Adjustment	Subtotals 2, 3, & 7	\$375
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Notes: Enhancement for one agreed order containing a denial of liability and Unsatisfactory Performer Classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

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: \$80
 Estimated Cost of Compliance: \$76
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,625
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OTHER FACTORS AS JUSTICE MAY REQUIRE	4.9%	Adjustment	\$80
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost of compliance associated with the Violation.

Final Penalty Amount	\$1,705
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,705
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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 is recommended for Findings Orders.

PAYABLE PENALTY	\$1,705
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Screening Date	12-Oct-2020	Docket No.	2020-1350-MLM-E	PCW
Respondent	Linda Mosbacker			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	55789			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN109492223			
Media	Air			
Enf. Coordinator	Alain Elegbe			

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>)	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) 20%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one agreed order containing a denial of liability and Unsatisfactory Performer Classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 30%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 30%

Screening Date	12-Oct-2020	Docket No.	2020-1350-MLM-E	PCW
Respondent	Linda Mosbacker			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	55789			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN109492223			
Media	Air			
Enf. Coordinator	Alain Elegbe			

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b) and TCEQ Agreed Order Docket No. 2018-0478-MLM-E, Ordering Provision No. 2.a.i

Violation Description Caused, suffered, allowed, or permitted outdoor burning within the State of Texas. Specifically, approximately one cubic yard of household waste, tires, insulation material, painted wood, roofing paper, plastic coated copper wire, mattresses, and a box-spring was burned without authorization.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	X	Percent <input type="text" value="5.0%"/>
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 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	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	X

Violation Base Penalty

One single event is recommended.

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	X	

Notes The Respondent does not meet the good faith criteria for this violation.

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 Linda Mosbacker
Case ID No. 55789
Reg. Ent. Reference No. RN109492223
Media Air
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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	\$76	25-Oct-2019	12-Oct-2020	0.97	\$4	\$76	\$80
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to properly dispose of approximately one cubic yard of MSW at an authorized facility rather than burning. Date required is the effective date of the agreed order. Final date is the screening date.

Approx. Cost of Compliance \$76

TOTAL \$80



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	10-Oct-2020		
	PCW	21-Jul-2021	Screening	12-Oct-2020
			EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Linda Mosbacker		
Reg. Ent. Ref. No.	RN109492223		
Facility/Site Region	10-Beaumont	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	55789	No. of Violations	1
Docket No.	2020-1350-MLM-E	Order Type	Findings
Media Program(s)	Waste Tires and Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Air	Enf. Coordinator	Alain Elegbe
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$90,000
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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	30.0% Adjustment	Subtotals 2, 3, & 7	\$27,000
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Notes	Enhancement for one agreed order containing a denial of liability and Unsatisfactory Performer classification.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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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	\$3,890	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$43,617	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$117,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0% Adjustment	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$117,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$117,000
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DEFERRAL	0.0% Reduction Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$117,000
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Screening Date	12-Oct-2020	Docket No.	2020-1350-MLM-E	PCW
Respondent	Linda Mosbacker			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	55789			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN109492223			
Media [Statute]	Waste Tires and Municipal Solid Waste			
Enf. Coordinator	Alain Elegbe			

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>)	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) 20%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one agreed order containing a denial of liability and Unsatisfactory Performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 30%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 30%

Screening Date	12-Oct-2020	Docket No.	2020-1350-MLM-E	PCW
Respondent	Linda Mosbacker			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	55789			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN109492223			
Media [Statute]	Waste Tires and Municipal Solid Waste			
Enf. Coordinator	Alain Elegbe			

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 330.15(a) and (c) and TCEQ Agreed Order Docket No. 2018-0478-MLM-E, Ordering Provision No. 2.b.i

Violation Description Caused, suffered, allowed, or permitted the collection, storage, processing or disposal of municipal solid waste ("MSW"). Specifically, approximately 6,047 scrap tires and approximately 895.72 cubic yards of construction and demolition waste, household waste, insulation material, painted wood, roofing paper, plastic coated copper wire remnants, mattresses, and a box spring were disposed of on the ground at the Site.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	x	<input type="text"/>	Percent <input type="text" value="30.0%"/>
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 Human health or the environment has been exposed to significant 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	<input type="text"/>
weekly	<input type="text"/>
monthly	x
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Twelve monthly events are recommended from October 25, 2019 effective date of the Agreed Order to the October 12, 2020 screening date.

Good Faith Efforts to Comply Reduction

		Before NOE/NOV	NOE/NOV to EDRP/ Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
N/A	x	<input type="text"/>	<input type="text"/>

Notes The Respondent does not meet the good faith criteria for this violation.

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 Linda Mosbacker
Case ID No. 55789
Reg. Ent. Reference No. RN109492223
Media Violation No. Waste Tires and Municipal Solid Waste
 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	\$43,617	25-Oct-2019	6-Aug-2021	1.78	\$3,890	n/a	\$3,890
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 dispose of the scrap tires (\$30,235 at \$5 per tire for 6,047 scrap tires) and 895.72 cubic yards of MSW (\$13,382) at a facility authorized to accept the waste. Date required is the effective date of the Agreed Order. 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 \$43,617

TOTAL \$3,890

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 CN605294446, RN109492223, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN605294446, Mosbacker, Linda **Classification:** UNSATISFACTORY **Rating:** 188.00

Regulated Entity: RN109492223, 410 OUR ROAD **Classification:** UNSATISFACTORY **Rating:** 188.00

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

CH Group: 14 - Other

Location: 410 Our Road, Shepherd, San Jacinto County, Texas 77371-2981

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s):
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER
R10109492223

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: February 22, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 22, 2016 to February 22, 2021

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

Name: Alain Elegbe

Phone: (512) 239-6924

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:

- 1 Effective Date: 10/25/2019 ADMINORDER 2018-0478-MLM-E (1660 Order-Agreed Order With Denial)
Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)
30 TAC Chapter 330, SubChapter A 330.15(c)
Description: Caused, suffered, allowed, or permitted the collection, storage, processing or disposal of MSW, in violation of 30 TEX. ADMIN. CODE §?330.15(a) and (c). Specifically, approximately 3,000 tires and 16.5 cubic yards of construction and demolition waste and burned waste including: household waste, insulation material, painted wood, roofing paper, plastic coated copper wire remnants, mattresses, and a box spring were disposed of on the ground at the Site
Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THSC Chapter 382 382.085(b)
Description: Caused, suffered, allowed, or permitted outdoor burning within the State of Texas, in violation of 30 TEX. ADMIN. CODE §?111.201 and TEX. HEALTH & SAFETY CODE §?382.085(b). Specifically, approximately 6.5 cubic yards of household waste, tires, insulation material, painted wood, roofing paper, plastic coated copper wire, mattresses, and a box-spring were burned without authorization.
Classification: Moderate
Citation: 30 TAC Chapter 324, SubChapter A 324.1
30 TAC Chapter 324, SubChapter A 324.4(1)
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(d)(3)
Description: Failure to prevent the disposal of used oil on the ground and failed to clean up and manage properly the released used oil. Specifically, used oil was disposed of on the ground on the left side of the residential structure and in an area approximately three feet by two feet under an elevated deck at the Site; and
Classification: Moderate
Citation: 30 TAC Chapter 324, SubChapter A 324.6
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)
Description: Failure to mark or clearly label used oil storage containers with the words "Used Oil", in violation of 30 TEX.

ADMIN. CODE § 324.6 and 40 CFR § 279.22(c). Specifically, an uncapped blue barrel containing used oil/water mixture at the Site was not labeled with the words "Used Oil".

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LINDA MOSBACKER;
RN109492223**

**§
§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2020-1350-MLM-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 chs. 361 and 382, 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 Linda Mosbacker (“Respondent”).

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

FINDINGS OF FACT

1. Respondent owns and operates an unauthorized municipal solid waste disposal site located at 410 Our Road in Shepherd, San Jacinto 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. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on July 21, 2020, an investigator documented that Respondent:
 - a. Caused, suffered, allowed, or permitted outdoor burning within the State of Texas. Specifically, approximately one cubic yard of household waste, scrap tires, insulation material, painted wood, roofing paper, plastic-coated copper wire, mattresses, and a box-spring were burned without authorization.
 - b. Caused, suffered, allowed, or permitted the collection, storage, processing, or disposal of MSW. Specifically, approximately 6,047 scrap tires and 895.72 cubic yards of construction and demolition waste, household waste, insulation material, painted wood, roofing paper, plastic-coated copper wire remnants, mattresses, and a box-spring were 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 Linda Mosbacker” (the “EDPRP”) in the TCEQ Chief Clerk’s office on October 29, 2021.
4. By letter dated October 29, 2021, sent to Respondent’s last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt “green card,” Respondent received notice of the EDPRP on November 2, 2021, as evidenced by the signature on the card.

5. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

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 chs. 361 and 382 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent caused, suffered, allowed, or permitted outdoor burning within the State of Texas, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 111.201, and TCEQ Agreed Order Docket No. 2018-0478-MLM-E, Ordering Provision No. 2.a.i.
3. As evidenced by Finding of Fact No. 2.b., Respondent caused, suffered, allowed, or permitted the collection, storage, processing, or disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(a) and (c) and TCEQ Agreed Order Docket No. 2018-0478-MLM-E, Ordering Provision No. 2.b.i.
4. As evidenced by Findings of Fact Nos. 3 and 4, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
5. As evidenced by Finding of Fact No. 5, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
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 one hundred eighteen thousand seven hundred five dollars (\$118,705.00) 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 one hundred eighteen thousand seven hundred five dollars (\$118,705.00) 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: Linda Mosbacker; Docket No. 2020-1350-MLM-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 disposing and burning of any additional MSW at the Site;
 - b. Within 30 days after the effective date of this Order, remove all MSW, including scrap tires, from the Site and dispose of it at an authorized facility; and
 - c. Within 90 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 required by these Ordering Provisions 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:

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

and:

Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703
77703-1830

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.
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 JOHN S. MERCULIEF II

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 Linda Mosbacher" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 29, 2021.

The EDPRP was mailed to Respondent's last known address on October 29, 2021, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on November 2, 2021, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

"My name is John S. Mercurief II, 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 14th day of February, 2022

A handwritten signature in cursive script that reads "John S. Mercurief II".

Declarant