

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Kelly Keel, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 7, 2023

Via Electronic Filing

The Honorable Linda Brite
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

Re: Corey Morrell
SOAH Docket No. 582-23-10566
TCEQ Docket No. 2021-0787-MSW-E
ED's Exceptions to the ALJ's Proposed Order

Dear Judge Brite:

Enclosed are the Executive Director's Exceptions to the ALJ's Proposed Order, for the above referenced case. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "William Hogan".

William Hogan
Staff Attorney
Office of Legal Services, Litigation Division
William.Hogan@tceq.texas.gov

Enclosure

cc: Corey Morrell, Respondent
Pranjali Mehta, Office of Public Interest Counsel

SOAH DOCKET NO. 582-23-10566
TCEQ DOCKET NO. 2021-0787-MSW-E

EXECUTIVE DIRECTOR OF THE	§	BEFORE THE
TEXAS COMMISSION ON	§	
ENVIRONMENTAL QUALITY,	§	
PETITIONER	§	STATE OFFICE OF
VS.	§	
Corey Morrell,	§	
RESPONDENT	§	ADMINISTRATIVE HEARINGS

EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

TO THE HONORABLE JUDGE BRITE:

COMES NOW, the Executive Director ("ED") of the Texas Commission on Environmental Quality, by and through William Hogan, a representative of TCEQ's Litigation Division, and respectfully files these exceptions to the Administrative Law Judge's (ALJ's) Proposed Order ("Exceptions"). The ED agrees with the substance of the Proposed Order, and these recommended modifications are intended to clarify the provisions of the Order and correct typographical errors.¹

I.

On October 18, 2023, the Honorable ALJ issued the Proposed Order in this case. Pursuant to Title 30 of the Texas Administrative Code § 80.257, the ED respectfully recommends the following exceptions:

1. The proposed order's caption should be modified to reflect it as an order not only assessing administrative penalties but also imposing corrective actions on Respondent Corey Morrell.
2. The first sentence of the proposed order's introductory paragraph should be modified so that it ends with: "...assessing administrative penalties against and requiring certain actions of Corey Morrell (Respondent)." This better matches the title of the ED's pleading in this matter and the relief sought to remedy the violation at issue.
3. In Finding of Fact No. 4, "In 2016," should be replaced with "By 2014," which would recite facts in the evidentiary record and acknowledged in the ALJ's Proposal For

¹ Copies of the Proposed Order with the recommended modifications are attached. Attachment A is a redline version and Attachment B is a copy of the Proposed Order incorporating all of the Executive Director's recommended changes.

Decision.²

4. Finding of Fact No. 5 should be deleted and replaced with the following: "Unknown parties discarded some or all of the tires at the Site, starting before June 2018." Respondent's statements as to how and when the tires arrived at the Site are vague and unreliable, but other evidence on the record confirms that tires began accumulating prior to June 2018.³
5. Finding of Fact No. 8, Conclusion of Law No. 9, and Ordering Provision No. 1, should be changed by deleting "\$7,500" and adding in its place "\$6,750."⁴ The latter number is the penalty amount recommended by the ED for any resolution of this matter that is not a default order.
6. Finding of Fact No. 19 should be changed by replacing "admitting" with "admitted."
7. Conclusion of Law No. 2 should be changed by adding the word "the" before "Texas Health and Safety Code."
8. Conclusion of Law No. 8 should be changed by adding "the" between "of" and "penalty."
9. Ordering Provision No. 1 should be changed by adding a second sentence that states: "Respondent shall immediately pay the assessed administrative penalty to the Commission."

² ED-5 at BP 56 (containing aerial imagery reflecting that two tire piles were present at the Site by 2014 but not when the tires had been previously placed at the Site).

³ Respondent indicated to the investigator that the tires at issue were discarded approximately two years before the date of the June 18, 2020 investigation. ED-2 at BP 4. However, photographic evidence shows that discarded tires were present at the Site much earlier than June 2018. ED-5 at BP 56. Further, Respondent cast doubt upon his statements during his cross-examination, claiming he could not remember when the tires had been discarded.

⁴ ED-9 at BP 149 (reflecting a "payable penalty" recommendation of \$6,750). The ED does contend that Respondent enjoyed \$750 in economic benefit through delaying his costs of compliance, but this amount is not assessed toward the final penalty because it does not meet the minimum threshold for the assessment of an economic benefit enhancement under TCEQ's Penalty Policy. ED-7 at BP 145 (explaining that delayed costs of a sufficient amount may trigger a percentage-based enhancement to the penalty but avoided costs are added dollar-for-dollar as an "other factor as justice may require" adjustment). The Executive Director intended to explain this nuance in detail during the testimony of Enforcement Coordinator Karolyn Kent; however, Respondent stipulated to correct calculation of the penalty, so detailed testimony of the penalty calculation was not provided.

II.

WHEREFORE, PREMISES CONSIDERED, the ED provides these Exceptions to the ALJ's Proposed Order, so that justice may be done.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel
Interim Executive Director

Erin E. Chancellor, Director
Office of Legal Services

Gitanjali Yadav, Deputy Director
Litigation Division



William Hogan
State Bar of Texas No. 24126017
Texas Commission on Environmental Quality
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400 (Phone)
William.Hogan@tceq.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2023, the foregoing Executive Director's Exceptions to Administrative Law Judge's Proposed Order ("Exceptions") were filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day, true and correct copies of the foregoing Exceptions were sent to the following persons via the methods indicated below:

Corey Morrell
4646 Amesbury Drive #575
Dallas, Texas 75206

Via Electronic Mail

The Honorable Judge Linda Brite
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

Via Electronic Filing

Pranjal Mehta
Office of Public Interest Counsel, MC 103
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Pranjal.Mehta@tceq.texas.gov

Via Electronic Mail



William Hogan, Staff Attorney
Texas Commission on Environmental Quality
Office of Legal Services, Litigation Division

ATTACHMENT A
Redlined Proposed Order



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**AN ORDER ASSESSING ADMINISTRATIVE PENALTIES AGAINST
AND REQUIRING CERTAIN ACTIONS OF COREY MORRELL
TCEQ DOCKET NO. 2021-0787-MSW-E
SOAH DOCKET NO. 582-23-10566**

On _____, the Texas Commission on Environmental Quality (TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against and requiring certain actions of Corey Morrell (Respondent). State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Linda Brite conducted an evidentiary hearing by videoconference on August 22, 2023.

After considering the ALJ's proposal for decision, the Commission adopts the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. In June 2020, Corey Morrell (Respondent) owned the property at 5637 Farm-to-Market Road 1434 near Cleburne, Johnson County, Texas (Site).
2. On June 18, 2020, a TCEQ investigator inspected the Site in response to a complaint.
3. On June 18, 2020, there were approximately 1,852 scrap tires with no apparent use, in three disorderly piles on the Site.
4. ~~In 2016~~By 2014, there were two tire piles on the Site. From 2016 to 2019, the tire piles grew in size and an additional tire pile was added.
5. ~~Unknown parties discarded the tires at the Site in approximately June 2018.~~
Unknown parties discarded some or all of the tires at the Site, starting before June 2018.
6. More tires were added to the Site over the years by unknown persons.
7. Respondent hired people to move the tires away from one area of his property to another to prevent them from being seen from the roadway.
8. The ED recommended the imposition of a ~~\$7,500~~\$6,750 administrative penalty and corrective actions to bring Respondent into compliance.
9. Respondent provided receipts showing that the tires were picked up in May 2021, but the receipts did not include the location of the tires' final disposition.
10. Respondent no longer owns the Site.
11. Respondent's compliance history shows he is a "High Performer."
12. There was an economic benefit derived from Respondent's failure to or delay in addressing the violation.
13. On October 18, 2022, the ED sent Respondent an Executive Director's

Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties and requiring corrective actions against Respondent.

14. Respondent requested a contested case hearing on the allegations in the EDPRP.
15. On December 28, 2022, the case was referred to SOAH for a hearing.
16. On January 26, 2023, the ED issued a Notice of Hearing.
17. SOAH Order No. 2, issued on February 24, 2023, set the hearing and provided participation instructions.
18. Together, the Notice of Hearing and SOAH Order No. 2 contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
19. SOAH ALJ Linda Brite convened the hearing via videoconference on August 22, 2023. The ED was represented by attorney William Hogan. Respondent represented himself. The TCEQ Office of Public Interest Counsel appeared and was represented by attorney Pranjal Mehta. The record closed on September 20, 2023, upon filing of ~~admitting~~admitted exhibits.

II. CONCLUSIONS OF LAW

1. TCEQ has enforcement jurisdiction over violations of the state's municipal waste program. Tex. Water Code §§ 5.013, 7.002.
2. TCEQ may assess an administrative penalty against any person who violates a provision of the Texas Health and Safety Code within TCEQ's jurisdiction, or any rule, order, or permit adopted or issued thereunder. Tex. Water Code § 7.051.

3. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
4. Respondent was properly notified of the hearing on the alleged violations and the proposed penalties and corrective action. Tex. Gov't Code §§ 2001.051-.052.
5. The ED has the burden of proof by a preponderance of the evidence in an enforcement proceeding. Respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted. 30 Tex. Admin. Code § 80.17(b).
6. The tires on the Site are scrap tires and constitute municipal solid waste. Tex. Health & Safety Code §§ 361.003(22), .112(l); 30 Tex. Admin. Code § 330.3(90), (142).
7. Respondent violated 30 Texas Administrative Code section 330.15 (a) and (c) by causing, suffering, allowing, or permitting the collection, storage, transportation, processing, or disposal of municipal solid waste on his property without Commission authorization.
8. In determining the amount of the penalty, TCEQ must consider the factors listed in Texas Water Code section 7.053.
9. Based on the above Findings of Fact and Conclusions of Law, a total administrative penalty of ~~\$7,500~~\$6,750 is justified and should be assessed against Respondent, and Respondent should be required to implement the corrective actions set out below.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. A ~~\$7,500~~\$6,750 administrative penalty is imposed on Respondent. Respondent shall immediately pay the assessed administrative penalty to the Commission.
2. Within 30 days after the effective date of this Order, Respondent shall submit documentation, including receipts and/or other records, that demonstrates the proper disposal of all scrap tires from the Site.
3. Within 45 days after the effective date of this Order, Respondent shall submit a written certification to the ED, and include detailed supporting documentation including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 2.
4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted, are denied.
5. The effective date of this Order is the date the Order is final as provided by 30 Texas Administrative Code section 80.273 and Texas Government Code section 2001.144.
6. The TCEQ's Chief Clerk shall forward a copy of this Order to Respondent.
7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Jon Niermann, Chairman for the Commission

ATTACHMENT B
Proposed Order Incorporating ED's Recommended Changes



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**AN ORDER ASSESSING ADMINISTRATIVE PENALTIES AGAINST
AND REQUIRING CERTAIN ACTIONS OF COREY MORRELL
TCEQ DOCKET NO. 2021-0787-MSW-E
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After considering the ALJ's proposal for decision, the Commission adopts the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

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2. On June 18, 2020, a TCEQ investigator inspected the Site in response to a complaint.
3. On June 18, 2020, there were approximately 1,852 scrap tires with no apparent use, in three disorderly piles on the Site.
4. By 2014, there were two tire piles on the Site. From 2016 to 2019, the tire piles grew in size and an additional tire pile was added.
5. Unknown parties discarded some or all of the tires at the Site, starting before June 2018.
6. More tires were added to the Site over the years by unknown persons.
7. Respondent hired people to move the tires away from one area of his property to another to prevent them from being seen from the roadway.
8. The ED recommended the imposition of a \$6,750 administrative penalty and corrective actions to bring Respondent into compliance.
9. Respondent provided receipts showing that the tires were picked up in May 2021, but the receipts did not include the location of the tires' final disposition.
10. Respondent no longer owns the Site.
11. Respondent's compliance history shows he is a "High Performer."
12. There was an economic benefit derived from Respondent's failure to or delay in addressing the violation.
13. On October 18, 2022, the ED sent Respondent an Executive Director's Preliminary Report and Petition (EDPRP) recommending that the

Commission enter an enforcement order assessing administrative penalties and requiring corrective actions against Respondent.

14. Respondent requested a contested case hearing on the allegations in the EDPRP.
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18. Together, the Notice of Hearing and SOAH Order No. 2 contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
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II. CONCLUSIONS OF LAW

1. TCEQ has enforcement jurisdiction over violations of the state's municipal waste program. Tex. Water Code §§ 5.013, 7.002.
2. TCEQ may assess an administrative penalty against any person who violates a provision of the Texas Health and Safety Code within TCEQ's jurisdiction, or any rule, order, or permit adopted or issued thereunder. Tex. Water Code § 7.051.
3. SOAH has jurisdiction over matters related to the hearing in this matter,

including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.

4. Respondent was properly notified of the hearing on the alleged violations and the proposed penalties and corrective action. Tex. Gov't Code §§ 2001.051-.052.
5. The ED has the burden of proof by a preponderance of the evidence in an enforcement proceeding. Respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted. 30 Tex. Admin. Code § 80.17(b).
6. The tires on the Site are scrap tires and constitute municipal solid waste. Tex. Health & Safety Code §§ 361.003(22), .112(l); 30 Tex. Admin. Code § 330.3(90), (142).
7. Respondent violated 30 Texas Administrative Code section 330.15 (a) and (c) by causing, suffering, allowing, or permitting the collection, storage, transportation, processing, or disposal of municipal solid waste on his property without Commission authorization.
8. In determining the amount of the penalty, TCEQ must consider the factors listed in Texas Water Code section 7.053.
9. Based on the above Findings of Fact and Conclusions of Law, a total administrative penalty of \$6,750 is justified and should be assessed against Respondent, and Respondent should be required to implement the corrective actions set out below.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. A \$6,750 administrative penalty is imposed on Respondent. Respondent shall immediately pay the assessed administrative penalty to the Commission.
2. Within 30 days after the effective date of this Order, Respondent shall submit documentation, including receipts and/or other records, that demonstrates the proper disposal of all scrap tires from the Site.
3. Within 45 days after the effective date of this Order, Respondent shall submit a written certification to the ED, and include detailed supporting documentation including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 2.
4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted, are denied.
5. The effective date of this Order is the date the Order is final as provided by 30 Texas Administrative Code section 80.273 and Texas Government Code section 2001.144.
6. The TCEQ's Chief Clerk shall forward a copy of this Order to Respondent.
7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Jon Niermann, Chairman for the Commission