

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

October 18, 2023

William Hogan
Corey Morrell
Pranjal Mehta

VIA EFILE TEXAS

RE: SOAH Docket No. 582-23-10566.TCEQ; TCEQ Docket No. 2021-0787-MSW-E; *The Executive Director of the Texas Commission on Environmental Quality v. Corey Morrell*

Dear Parties:

Please find attached a Proposal for Decision (PFD) and Proposed Order in this case. Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs, and replies along with certification of service to the above parties and the ALJ shall be filed with the Chief Clerk of the TCEQ electronically at <http://www14.tceq.texas.gov/epic/eFiling/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

CC: Service List

SOAH Docket No. 582-23-10566

Suffix: TCEQ

TCEQ Docket No. 2021-0787-MSW-E

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

—
**EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
PETITIONER**

v.

**COREY MORRELL,
RESPONDENT**

PROPOSAL FOR DECISION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) alleges that Corey Morrell (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 (MSW)—in the form of scrap tires—on his property without Commission authorization. The ED requests that the Commission

assess an administrative penalty of \$7,500 for these violations and order Respondent to take corrective actions.

The Administrative Law Judge (ALJ) finds that Respondent committed the alleged violations, and recommends that the Commission assess an administrative penalty of \$7,500 and order the corrective actions recommended by the ED.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice was not contested and is addressed in the attached proposed order without further discussion here.

Respondent contends that TCEQ does not have jurisdiction because there is no judicial precedent or statutory language establishing that used tires fit the definition of MSW. The ALJ will further analyze the definitions of scrap tires and MSW in the Analysis section. Nevertheless, used tires and scrap tires still constitute solid waste, over which TCEQ has enforcement jurisdiction.¹ Therefore, TCEQ has jurisdiction over this enforcement proceeding.

The hearing convened via videoconference on August 22, 2023, before ALJ Linda Brite of the State Office of Administrative Hearings (SOAH). The ED was represented by attorney William Hogan. Respondent appeared and represented himself. The TCEQ Office of Public Interest Counsel (OPIC) was represented by

¹ Tex. Water Code §§ 5.013(a)(11), 7.002.

attorney Pranjali Mehta. The record closed on September 20, 2023, upon filing of admitted exhibits.

II. APPLICABLE LAW

The Commission has enforcement authority over violations of the state’s solid waste disposal programs.² A person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of MSW in a manner that causes the endangerment of the human health and welfare or the environment.³ Generally, a person may not cause, suffer, allow, or permit the dumping or disposal of MSW without the written authorization of the Commission.⁴ MSW means “solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.”⁵

Additionally, the Texas Health and Safety Code and Commission rules prohibit the storage of more than 500 used or scrap tires on the ground, or more than 2,000 used or scrap tires in enclosed and lockable containers, unless the person

² Tex. Water Code §§ 5.013(a)(11), 7.002.

³ 30 Tex. Admin. Code § 330.15(a).

⁴ 30 Tex. Admin. Code § 330.15(c).

⁵ Tex. Health & Safety Code § 361.003(22); 30 Tex. Admin. Code § 330.3(90).

registers the storage site with the Commission.⁶ Scrap tire means “a tire that can no longer be used for its original intended purpose.”⁷

III. EVIDENCE AND ARGUMENT

The ED had ten exhibits admitted and presented the testimony of investigator Robert Lewis and enforcement coordinator Karolyn Kent. Respondent testified and had 17 exhibits admitted.

A. TESTIMONY OF ROBERT LEWIS

Robert Lewis is an environmental investigator with the solid waste section of TCEQ. His responsibilities include conducting investigations, documenting investigation reports, and responding to complaints of environmental concerns. On June 18, 2020, Mr. Lewis performed an unannounced compliance investigation of 5637 Farm-to-Market Road 1434 near Cleburne, Johnson County, Texas (Site), which was owned by Respondent, in response to a complaint of dumping tires on property in exchange for cash.⁸ Mr. Lewis determined there were approximately 1,852 scrap tires on the ground at the Site. Respondent told Mr. Lewis that the scrap tires were disposed on his property by unknown parties approximately around 2018,

⁶ Tex. Health & Safety Code § 361.112(a); *see also* 30 Tex. Admin. Code § 328.60(a).

⁷ Tex. Health & Safety Code § 361.112(l); 30 Tex. Admin. Code § 330.3(142).

⁸ *See* Ex. ED-2. As of May 2021, Respondent is no longer the owner of the Site. *See* Resp. Ex. 13.

without his knowledge.⁹ Mr. Lewis took photos of the scrap tire piles.¹⁰ There was no evidence of vector control, anchoring, or fire prevention.¹¹

Mr. Lewis explained that abandoned scrap tires pose a hazard in a fire. If the scrap tires caught fire, they would create thick smoke, putting toxic pollutants into the air. The tires would also produce an oil that could seep into the ground and cause further contamination. Scrap tires can create pest habitat and disease vectors: small insects and animals can carry diseases that can be transmitted to humans and animals. The scrap tires could also migrate because they are not organized or strapped down. The tires could wind up in ditches or creeks, causing harm to neighboring properties. According to Mr. Lewis, the scrap tires endanger the environment and health and safety. Mr. Lewis testified that there was no evidence that the tires were being used, re-used, reclaimed, or recycled.

Aerial photos from the Johnson County Appraisal District website depict the Site and its property lines.¹² The November 2014 photo shows two dark masses that appear to be the scrap tire piles.¹³ The 2016 photo depicts the tire piles remaining in the same position.¹⁴ The 2019 photo shows that the tire pile on the southwest corner

⁹ Ex. ED-2 at Bates 4.

¹⁰ Ex. ED-2 at Bates 18, 19; Ex. ED-3.

¹¹ Although Respondent indicated in his Response to Interrogatories that he regularly cut grass in the area to minimize ignition by wildfire, the photos do not indicate that the grass was being mowed around the tires. Ex. ED-4 at Bates 50-51.

¹² Ex. ED-5.

¹³ Ex. ED-5 at Bates 56.

¹⁴ Ex. ED-5 at Bates 61.

has grown in size, and shows an additional third pile on the northeast side of the property that previously was not there.¹⁵ The 2021 photo shows the same three piles from 2019.¹⁶

Mr. Lewis indicated that, although there were receipts showing that the tires were picked up in May 2021, further corrective action was needed because the manifest did not include where the tires went for final disposition. Mr. Lewis stated that the final disposition needs to be on the manifest, for Respondent to be in compliance.

Mr. Lewis acknowledged that the photos of the tires were not detailed enough to show their condition. Mr. Lewis determined they were scrap tires because they were stockpiled, not neatly organized, appeared to be scrap tires, and did not have any apparent use. According to Mr. Lewis, while it is possible that the tires could still be used for their intended purpose, they are considered waste since they were abandoned and unused for so long. There was no documentation that any inspection of individual tires was performed. Mr. Lewis stated he was able to determine an estimated number using lasers and a calculator.

TCEQ sent Respondent reference materials on beneficial use projects. Mr. Lewis stated that, after TCEQ provided deadlines of January 15 and 29, 2021, Respondent had not submitted proof that a beneficial reuse project had started.

¹⁵ Ex. ED-5 at Bates 62.

¹⁶ Ex. ED-5 at Bates 59.

The Executive Director recommends that Respondent be required to implement the following corrective measures: (1) within 30 days of the Order, submit documentation, including receipts and/or other records, that demonstrates the proper disposal of all scrap tires from the Site; and (2) within 45 days of the Order, submit written certification demonstrating compliance, with detailed supporting documentation including photographs, receipts, and/or other records.¹⁷

B. TESTIMONY OF KAROLYN KENT

Karolyn Kent is a TCEQ enforcement coordinator. Her job duties include reading and reviewing enforcement action referrals, developing an enforcement case based on the violations cited, and calculating the penalty for the case. After the matter is referred to enforcement, the enforcement coordinator will prepare a penalty calculation worksheet (PCW), agreed order, and cover letter to send to Respondent. The PCW facilitates calculation of a fair and consistent penalty consistent with TCEQ's penalty policy.

The PCW prepared for Respondent shows one violation.¹⁸ The violation was classified as a major source because there are more than 500 tires.¹⁹ The violation was classified as a minor actual release because scrap tires were disposed of at the

¹⁷ Ex. ED-A at Bates 5.

¹⁸ Ex. ED-9 at Bates 149.

¹⁹ Ex. ED-7 at Bates 129, 131.

Site but released a relatively insignificant amount of pollutants.²⁰ Based on this information and the penalty policy, 30 percent was multiplied by the maximum penalty of \$25,000, equaling a \$7,500 base penalty for this violation.²¹ This was considered one quarterly violation event, which did not affect the penalty amount.²² A ten percent adjustment was applied for Respondent's compliance history as a "High Performer."²³ No adjustment was applied for good faith efforts to comply, because Respondent was not fully in compliance yet.²⁴ Ms. Kent determined that there was an economic benefit of \$750, as delayed costs by not being compliant.²⁵

The ED seeks corrective action by requiring Respondent to submit special documentation of receipts of manifests that show the scrap tires were properly disposed of, and certification of those documents.

When asked why MSW and waste tires are listed separately in the penalty policy, Ms. Kent stated that all scrap tires are MSW, but not all MSW is scrap tires. According to Ms. Kent, a scrap tire is any unused tire that cannot be reused and is not being recycled.

²⁰ Ex. ED-9 at Bates 151; *see* Ex. ED-7 at Bates 132.

²¹ *See* Ex. ED-7 at Bates 137.

²² *See* Ex. ED-7 at Bates 138.

²³ *See* Ex. ED-7 at Bates 142.

²⁴ *See* Ex. ED-7 at Bates 143.

²⁵ Ex. ED-9 at Bates 152; *see* Ex. ED-7 at 144-45.

C. TESTIMONY OF RESPONDENT

Respondent testified that he did not cause the tires to be placed on his property. He does not remember when he discovered the tires on his property. He hired some high-schoolers to move the pile of tires to the very back of the property away from the traveled roadway. Respondent noticed that when passersby see the pile of tires, they toss more tires over the fence, and he would see more tires every few weeks.

He differentiated the 2008 case²⁶ from the present scenario by pointing out that: (1) the 2008 case involved cut brush, wooden pallets, and tires; whereas Respondent's case involves only tires; and (2) in the 2008 case, the landowner admitted to causing the tires to be placed on his property intentionally. Respondent opined that this type of case must be "exceedingly rare" since the ED did not reference a case that was more on-point. Respondent characterized the tires as "building materials" rather than MSW.

Respondent described TCEQ's investigation as "scant and quick." According to Respondent, the investigator did not document a minimum of 500 tires that conclusively could not be used for their intended purpose. Respondent opined that they should have pulled 500 tires out and measured the tread depth, noted the overall condition of the tires, and forwarded that information to a tire expert to determine whether each tire could be used for its intended purpose. Instead, the investigator was at the Site for approximately 35 minutes.

²⁶ See Exs. ED-K, ED-L (SOAH Docket No. 582-08-0163, TCEQ Docket No. 2007-0452-MSW-E).

ED staff sent Respondent emails requiring documentation of a beneficial use project by certain deadlines. Respondent did not consider these emails to be an official notification, although Respondent agreed to service by email for this proceeding.

Respondent stated that as of May 2021, he is no longer the owner of that property, and the tires were disposed of prior to the completion of the sale. He sent TCEQ the receipts from the tire recycling facility that picked up the tires.²⁷

IV. ANALYSIS

A. ALLEGED VIOLATIONS

The preponderance of evidence establishes that the piles of tires at the Site are scrap tires and MSW. A scrap tire is a “tire that can no longer be used for its original intended purpose.”²⁸ The tires were abandoned on Respondent’s property and piled in a disorganized fashion, with no apparent use for many years. No evidence was presented showing any of the tires were used for their intended purpose after being stored at the Site. The record demonstrates that the tire piles have been abandoned and are not being re-used, reclaimed, or recycled. As such, the greater weight of evidence establishes that the tires at the Site were scrap tires.

²⁷ Resp. Ex. 13.

²⁸ Tex. Health & Safety Code § 361.112(l); 30 Tex. Admin. Code § 330.3(142).

Respondent told the investigator that the tires had been disposed of on his property by unknown parties in approximately June 2018. Unknown parties discarding the tires at the Site comports with the meaning “garbage,”²⁹ a term listed in the definition of MSW.³⁰ Multiple references of scrap tires are included the Commission’s Chapter 330 rules relating to MSW.³¹ Additionally, the Commission has considered scrap tires to be MSW in prior enforcement matters.³² The ALJ concludes that the scrap tires on the Site are MSW.

Respondent is not authorized by the Commission to store scrap tires. He said the tires had been disposed of in June 2018; and the aerial photos from 2016 through 2019 show an additional tire pile and growth of the tire piles. Respondent hired people to move the tires from one area of his property to another to prevent them from being seen from the roadway. By doing so, Respondent caused, suffered, allowed, or permitted the collection, storage, transportation, processing, or disposal of municipal solid waste on his property without Commission authorization, in violation of 30 Texas Administrative Code section 330.15(a) and (c).

²⁹ *Garbage*. Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/garbage>. Accessed September 2023.

³⁰ Tex. Health & Safety Code § 361.003(22); 30 Tex. Admin. Code § 330.3(90).

³¹ See 30 Tex. Admin. Code §§ 330.5(a)(6) (Classification of Municipal Solid Waste Facilities), .9(d) (Registration Required).

³² See Exs. ED-K, ED-L (SOAH Docket No. 582-08-0163, TCEQ Docket No. 2007-0452-MSW-E).

B. PROPOSED PENALTY AND CORRECTIVE ACTIONS

TCEQ must consider certain statutory factors that are further explained in the Penalty Policy.³³ The administrative penalty recommended by the ED is \$7,500 for the violation. The \$7,500 base penalty amount was reduced ten percent for Respondent's compliance history as a "High Performer" and enhanced to account for \$750 economic benefit, which equals a final penalty amount of \$7,500. Respondent did not dispute the administrative penalty amount. The ALJ finds that \$7,500 is an appropriate administrative penalty amount for this case.

The ED also seeks corrective actions by requiring Respondent to submit documentation, including receipts and/or other records, that demonstrates the proper disposal of all scrap tires from the Site, and to submit written certification to the Commission demonstrating compliance. The ALJ finds that the corrective actions are appropriate and necessary to address Respondent's violation.

V. RECOMMENDATION

The ALJ recommends that the Commission adopt the attached proposed order, assessing Respondent a total of \$7,500 in administrative penalties for the violations proven in this case and requiring Respondent to take the corrective actions necessary to correct the violations.

³³ Tex. Water Code § 7.053; Ex. ED-7.

Signed October 18, 2023

ALJ Signature:

Linda Brite

Linda Brite

Presiding Administrative Law Judge



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**AN ORDER ASSESSING ADMINISTRATIVE PENALTIES
AGAINST 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 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, 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.
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 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 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 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 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 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 administrative penalty is imposed on Respondent.
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