

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 61493
Jose Isaias Roque and Jose Conejo
RN111330445
Docket No. 2022-0071-MLM-E

Order Type:
Default Order

Media:
MLM: MSW, AIR

Small Business:
N/A

Location(s) Where Violation(s) Occurred:
22965 North Addison, San Antonio, Bexar County (the “Site”)

Type of Operation:
unauthorized municipal waste disposal site consisting of one or more sources

Other Significant Matters:
Additional Pending Enforcement Actions: Yes, Docket No. 2021-0638-MSW-E
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third-Parties: None

Texas Register Publication Date: October 14, 2022

Comments Received: None

Penalty Information

Total Penalty Assessed: \$10,144

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$10,144

Compliance History Classifications:
Person/CN - Unclassified (CN605870625);
Person/CN - Not Applicable (CN605930577);
Site/RN - Not Applicable (RN111330445)

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: January 28, 2021

Investigation Information

Complaint Date(s): August 6, 2021
Complaint Information: The complaint alleges that scrap shingles and other C&D waste materials are currently being accepted for money (\$300 a load) and then disposed of (by subgrade burial) on a rural property.

Date(s) of Investigation: September 10, 2021

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

Date(s) of NOE(s): September 29, 2021

Jose Isaias Roque and Jose Conejo

RN111330445

Docket No. 2022-0071-MLM-E

Violation Information

1. Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste (“MSW”) [30 TEX. ADMIN. CODE § 330.15(a) and (c)].
2. Caused, suffered, allowed, or permitted outdoor burning within the State of Texas [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

None

Technical Requirements:

1. Immediately:
 - a. Cease all unauthorized burning of MSW at the Site; and
 - b. Cease disposing of any additional MSW, including scrap tires and roofing shingles at the Site.
2. Within 30 days, remove all MSW, including scrap tires and roofing shingles, from the Site and dispose of it at an authorized Facility.
3. Within 45 days, submit written certification to demonstrate compliance with Technical Requirement Nos. 1 and 2.

Litigation Information**Date Petition(s) Filed:** July 20, 2022**Date Green Card(s) Signed:** July 22, 2022**Date Answer(s) Filed:** N/A**Contact Information****TCEQ Attorneys:** Jennifer Peltier, Litigation Division, (512) 239-3400
Sheldon Wayne, 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) 239-6924**TCEQ Regional Contact:** George Ortiz, San Antonio Regional Office, (210) 490-3096**Respondent Contact:** Jose Isaias Roque and Jose Conejo, 22804 Mason Pass, San Antonio, Texas
78264**Respondent's Attorney:** N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned | 4-Oct-2021 | Screening | 14-Oct-2021 | EPA Due | |
| | PCW | 12-Oct-2022 | | | | |

| | |
|--|-----------------------------------|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Jose Isaias Roque and Jose Conejo |
| Reg. Ent. Ref. No. | RN111330445 |
| Facility/Site Region | 13-San Antonio |
| Major/Minor Source | Minor |

| | | | |
|--|-----------------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 61493 | No. of Violations | 2 |
| Docket No. | 2022-0071-MLM-E | Order Type | 1660 |
| Media Program(s) | Municipal Solid Waste | Government/Non-Profit | No |
| Multi-Media | Air | Enf. Coordinator | John Fennell |
| | | 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 | \$10,000 |
|---|-------------------|-----------------|

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 Respondents do 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 | \$989 | *Capped at the Total EB \$ Amount |
| Estimated Cost of Compliance | \$19,188 | |

| | | |
|-----------------------------|-----------------------|-----------------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$10,000 |
|-----------------------------|-----------------------|-----------------|

| | | |
|---|------------------------|--------------|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 1.4% Adjustment | \$144 |
|---|------------------------|--------------|

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 2.

| | |
|-----------------------------|-----------------|
| Final Penalty Amount | \$10,144 |
|-----------------------------|-----------------|

| | | |
|-----------------------------------|-------------------------------|-----------------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$10,144 |
|-----------------------------------|-------------------------------|-----------------|

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

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for non-expedited settlement.

| | |
|------------------------|-----------------|
| PAYABLE PENALTY | \$10,144 |
|------------------------|-----------------|

Screening Date 14-Oct-2021

Docket No. 2022-0071-MLM-E

PCW

Respondent Jose Isaias Roque and Jose Conejo

Policy Revision 5 (January 28, 2021)

Case ID No. 61493

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN111330445

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)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

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 14-Oct-2021

Docket No. 2022-0071-MLM-E

PCW

Respondent Jose Isaias Roque and Jose Conejo

Policy Revision 5 (January 28, 2021)

Case ID No. 61493

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN111330445

Media Municipal Solid Waste

Enf. Coordinator John Fennell

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 330.15(a) and (c)

Violation Description

Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 30 scrap tires and approximately 1,051 cubic yards of MSW consisting of roofing shingles, wooden pallets, brush, and construction and demolition waste were disposed of at the Site.

Base Penalty

\$25,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | | x | |
| Potential | | | |

Percent 25.0%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | | | |

Percent 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

\$18,750

\$6,250

Violation Events

Number of Violation Events 1

34 Number of violation days

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | X |
| semiannual | |
| annual | |
| single event | |

Violation Base Penalty

\$6,250

One quarterly event is recommended from the September 10, 2021 investigation date to the October 14, 2021 screening date.

Good Faith Efforts to Comply

0.0%

Reduction

\$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

| | | |
|---------------|---|--|
| Extraordinary | | |
| Ordinary | | |
| N/A | X | |

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal

\$6,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$845

Violation Final Penalty Total

\$6,340

This violation Final Assessed Penalty (adjusted for limits)

\$6,340

Economic Benefit Worksheet

Respondent Jose Isaias Roque and Jose Conejo
Case ID No. 61493
Reg. Ent. Reference No. RN111330445
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 | \$19,045 | 10-Sep-2021 | 31-Jul-2022 | 0.89 | \$845 | n/a | \$845 |
| 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 remove approximately 1051 cubic yards of MSW (\$18,895) and approximately 30 scrap tires [(\$150) (\$5 per tire)] from the Site and dispose of it at an authorized facility. The Date Required is the investigation date, and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|--|--|--|------|-----|-----|-----|
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$19,045

TOTAL

\$845

| | | | | |
|--------------------------------|---|---------------------|-----------------|---|
| Screening Date | 14-Oct-2021 | Docket No. | 2022-0071-MLM-E | PCW |
| Respondent | Jose Isaias Roque and Jose Conejo | | | <i>Policy Revision 5 (January 28, 2021)</i> |
| Case ID No. | 61493 | | | <i>PCW Revision February 11, 2021</i> |
| Reg. Ent. Reference No. | RN111330445 | | | |
| Media | Municipal Solid Waste | | | |
| Enf. Coordinator | John Fennell | | | |
| Violation Number | 2 | | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b) | | | |
| Violation Description | Caused, suffered, allowed, or permitted outdoor burning within the State of Texas. Specifically, approximately, 6.38 cubic yards of MSW consisting of brush, grassy vegetation, metal sofa springs, and recliner hinges was burned at the Site. | | | |
| | | Base Penalty | \$25,000 | |

>> Environmental, Property and Human Health Matrix

| | | | | | |
|-----------|----------------|-------------|----------|-------|----------------------|
| OR | | Harm | | | |
| | Release | Major | Moderate | Minor | |
| | Actual | | | X | Percent 15.0% |
| | Potential | | | | |

>> Programmatic Matrix

| | | | | | |
|---------------------|--|-------|----------|-------|---------------------|
| | Falsification | Major | Moderate | Minor | |
| | | | | | Percent 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 \$21,250

\$3,750

Violation Events

Number of Violation Events 1 1 Number of violation days

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | X |

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply 0.0% Reduction \$0

| | | |
|---------------|----------------|----------------------------------|
| | Before NOE/NOV | NOE/NOV to EDRP/Settlement Offer |
| Extraordinary | | |
| Ordinary | | |
| N/A | X | |

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

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

Estimated EB Amount \$144 **Violation Final Penalty Total** \$3,804

This violation Final Assessed Penalty (adjusted for limits) \$3,804

Economic Benefit Worksheet

Respondent Jose Isaias Roque and Jose Conejo
Case ID No. 61493
Reg. Ent. Reference No. RN111330445
Media Municipal Solid Waste
Violation No. 2

| 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 | | | | 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 | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | \$143 | 2-Sep-2021 | 14-Oct-2021 | 0.12 | \$1 | \$143 | \$144 |

Notes for AVOIDED costs

Estimated avoided cost to properly dispose of approximately 6.38 cubic yards of MSW at an authorized facility rather than burning. The Date Required is one day prior to the investigation begin date, and the Final Date is the screening date.

Approx. Cost of Compliance

\$143

TOTAL

\$144

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Compliance History Report

Compliance History Report for CN605870625, RN111330445, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator: CN605870625, Roque, Jose Isaias **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN111330445, 22965 N ADDISON PROP ID BEXAR CAD 161445 **Classification:** NOT APPLICABLE **Rating:** N/A

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

CH Group: 14 - Other

Location: 22965 North Addison, San Antonio, Bexar County, Texas 78264

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER
 R13111330445

Compliance History Period: September 01, 2016 to August 31, 2021 **Rating Year:** 2021 **Rating Date:** 09/01/2021

Date Compliance History Report Prepared: January 20, 2022

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 20, 2017 to January 20, 2022

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:
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

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Compliance History Report

Compliance History Report for CN605930577, RN111330445, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator: CN605930577, Jose Conejo **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN111330445, 22965 N ADDISON PROP ID BEXAR CAD 161445 **Classification:** NOT APPLICABLE **Rating:** N/A

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

CH Group: 14 - Other

Location: 22965 North Addison, San Antonio, Bexar County, Texas 78264

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER
 R13111330445

Compliance History Period: September 01, 2016 to August 31, 2021 **Rating Year:** 2021 **Rating Date:** 09/01/2021

Date Compliance History Report Prepared: January 20, 2022

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 20, 2017 to January 20, 2022

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:
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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JOSE ISAIAS ROQUE AND
JOSE CONEJO;
RN111330445**

**§
§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2022-0071-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 respondents. The respondents made the subject of this Order are Jose Isaias Roque and Jose Conejo (“Respondents”).

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

FINDINGS OF FACT

1. Respondents own and operate an unauthorized municipal waste disposal site located at 22965 North Addison in San Antonio, Bexar County, Texas (the "Site"). The Site contains and/or involves the management of municipal solid waste ("MSW"), including scrap tires and scrap roofing shingles, 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 September 10, 2021, an investigator documented that Respondents:
 - a. Caused, suffered, allowed, or permitted the unauthorized disposal of MSW. Specifically, approximately 30 scrap tires and approximately 1,051 cubic yards of MSW consisting of roofing shingles, wooden pallets, brush, and construction and demolition waste were disposed of at the Site; and
 - b. Caused, suffered, allowed, or permitted outdoor burning within the State of Texas. Specifically, approximately, 6.38 cubic yards of MSW consisting of brush, grassy vegetation, metal sofa springs, and recliner hinges was burned 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 Jose Isaias Roque and Jose Conejo” (the “EDPRP”) in the TCEQ Chief Clerk’s office on July 20, 2022.
4. By letter dated July 20, 2022, sent to each Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served each Respondent with notice of the EDPRP. According to USPS.com “Track & Confirm” delivery confirmation records, each Respondent received notice of the EDPRP on July 22, 2022.
5. More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are 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., Respondents caused, suffered, allowed, or permitted the unauthorized disposal of MSW in violation of 30 TEX. ADMIN. CODE § 330.15(a) and (c).
3. As evidenced by Finding of Fact No. 2.b., Respondents 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).
4. As evidenced by Findings of Fact Nos. 3 and 4, the Executive Director timely served Respondents 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, Respondents 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 Respondents 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 Respondents 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 ten thousand one hundred forty-four dollars (\$10,144.00) 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. Respondents are assessed an administrative penalty in the amount of ten thousand one hundred forty-four dollars (\$10,144.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondents' 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: Jose Isaias Roque and Jose Conejo; Docket No. 2022-0071-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. Respondents shall undertake the following technical requirements:
 - a. Immediately upon the effective date of the this Order:
 - i. Cease all unauthorized burning of MSW at the Site; and
 - ii. Cease disposing of any additional MSW, including scrap tires and roofing shingles at the Site.
 - b. Within 30 days after the effective date of this Order, remove all MSW, including scrap tires and roofing shingles, from the Site and dispose of it at an authorized Facility.
 - c. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.b. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondents, and shall include the following certification language:

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

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

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

and:

Waste Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480
4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Enforcement Division at the address listed above.
7. If Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or

other catastrophe, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents 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 Respondents if the Executive Director determines that Respondents have 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 JENNIFER PELTIER

“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 Jose Isaias Roque and Jose Conejo’ (the “EDPRP”) was filed in the TCEQ Chief Clerk’s office on July 20, 2022.

The EDPRP was mailed to each Respondents' last known address on July 20, 2022, via certified mail, return receipt requested, postage prepaid. According to USPS.com “Track & Confirm” delivery confirmation records, each Respondent received notice of the EDPRP on July 22, 2022.

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

"My name is Jennifer Peltier, 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 8th day of September, 2022

A handwritten signature in cursive script, appearing to read "J Peltier".

Declarant