

# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

June 27, 2024

Marilyn Norrod  
Eli Martinez  
Eddie Lewis  
Paloma Dominguez

VIA EFILE TEXAS

**RE: SOAH Docket No. 582-23-12834; TCEQ Docket No. 2022-0376-MSW-E; *The Executive Director of the Texas Commission on Environmental Quality v. STL Developer, LLC***

Dear Parties:

The Proposal for Decision and Proposed Order (PFD) in this case was issued on May 22, 2024. Petitioner, the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ), and Respondent, STL Developer, LLC, each timely filed exceptions in accordance with 30 Texas Administrative Code section 80.257(a). The ED also timely responded to Respondent's exceptions. The ALJ agrees to make the changes proposed in the ED's exceptions but declines to adopt Respondent's proposed exceptions.

## **I. THE ED'S EXCEPTIONS**

The ED excepted to findings of fact (FOFs) 8 and 11 and certain references in the Ordering Provisions. Regarding FOFs 8 and 11, the ED asks to delete those findings in favor of nearly identical findings that correct the number of scrap and used tires observed by investigators during two TCEQ investigations. The ALJ agrees that the evidence reflects the numbers cited in the ED's exceptions and recommends that Findings of Fact 8 and 11 should be amended as follows:

Finding of Fact 8: During the March 2021 investigation, iInvestigators observed that the excavated piles of material consisted of plastic bags, lumber, household waste, concrete slabs, clothing and fabric, piping, aluminum, brush, automobile parts, and scrap tires<sup>25</sup> used or scrap tires and 7 used or scrap tractor/truck tires, among other things. The material appeared to be discarded and abandoned, with vegetation growing through some areas, indicating it had been there for some time.

Finding of Fact 11: During the February 2022 investigation, TCEQ investigators also observed material that appeared to have been dumped at the Site since the March 2021 investigation, including an additional 45 tires<sup>13</sup> used or scrap tires, boilers and/or water heaters, boxes of brush, two buckets of oil that had spilled in an approximate area of four square feet, and mattresses.

The ALJ also agrees with the ED that references to “this Commission Order” in Ordering Provision No. 1, and references to “the Commission Order” in Ordering Provision Nos. 3.a. through 3.e., should be changed to “this Order” in all instances for purposes of clarity and consistency.

## II. RESPONDENT’S EXCEPTIONS

Respondent’s first exception seeks to add FOFs, based on testimony from Respondent’s representative, Sergio Lara, regarding the purported costs to implement the ED’s recommended corrective action and Respondent’s purportedly limited financial resources. To be sure, the ED and Respondent presented conflicting estimates of the costs to perform the ED’s requested corrective action. The TCEQ, however, is authorized to order a person to take corrective action for violations of any statute or rule within its jurisdiction regardless of the cost or the person’s ability to pay.<sup>1</sup> Respondent, moreover, does not dispute the ED’s evidence or the PFD’s COL that Respondent should be assessed a \$4,725 administrative

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<sup>1</sup> See Tex. Water Code § 7.073.

penalty,<sup>2</sup> which was based on the ED's Penalty Calculation Worksheet and considered the ED's estimated cost of completing corrective action.<sup>3</sup> Consequently, the ALJ declines to recommend adding the FOFs proposed in Respondent's first exception.

Second, in lieu of FOF 36, Respondent seeks to add FOFs stating that Respondent's alternative corrective action, which drew on the purported Deepwood Project precedent addressed at the hearing, is a valid alternative under TCEQ's historical interpretation of Title 30, chapter 330, subchapter T of the Texas Administrative Code (Subchapter T). Respondent also requests FOFs stating that Respondent's alternative proposal is the only proposed corrective action that is feasible and that Respondent is capable of achieving given its limited financial resources. Lastly, Respondent's second exceptions requests a FOF ordering that Respondent carry out its alternative corrective action. Respondent's third exception, relatedly, seeks to replace COL 20 with COLs ordering Respondent to engage with the TCEQ, resubmit its Application to Disturb Final Cover, and timely respond to the TCEQ's requests for information to complete a remedy of reburying the waste at the Site under Subchapter T.

The PFD spends multiple pages addressing the ED and Respondent's competing proposals regarding corrective action and the purported Deepwood Project precedent, as well as the ALJ's analysis and the evidence supporting the ALJ's findings and conclusions that Respondent should be ordered to carry out the ED's proposed corrective action. Respondent's exceptions simply rehash arguments made throughout the hearing and in Respondent's written briefing and offer no new arguments for consideration. Having already addressed these arguments, the ALJ will not revisit them here.

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<sup>2</sup> See, e.g., Respondent's Written Closing Arg. at 2, 5 (filed March 4, 2024); see also Respondent's Exceptions to May 22, 2024 PFD (filed June 11, 2024).

<sup>3</sup> See PFD at 12-13, 25.

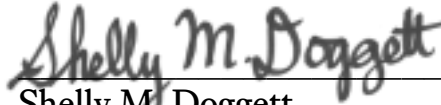
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Accordingly, the ALJ recommends the Commission adopt the amendments specifically listed herein and overrule all other exceptions. The PFD is ready for consideration.

ALJ Signature:

A handwritten signature in black ink that reads "Shelly M. Doggett". The signature is written in a cursive style and is positioned above a horizontal line.

Shelly M. Doggett

Presiding Administrative Law Judge

CC: Service List