

Jon Niermann, *Chairman*  
Bobby Janecka, *Commissioner*  
Catarina R. Gonzales, *Commissioner*  
Kelly Keel, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 10, 2024

### **Via Electronic Filing**

The Honorable Shelly M. Doggett  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

Re: STL Developer, LLCs; SOAH Docket No. 582-23-12834  
TCEQ Docket No. 2022-0376-MSW-E  
ED's Exceptions to the ALJ's Proposed Order

Dear Judge Doggett:

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 black ink, appearing to read "Marilyn A. M.", written over a light blue horizontal line.

Marilyn Norrod, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality  
[Marilyn.Norrod@tceq.texas.gov](mailto:Marilyn.Norrod@tceq.texas.gov)

Enclosure

cc: Eddie Lewis, Attorney for Respondent  
Eli Martinez, Office of Public Interest Counsel

SOAH DOCKET NO. 582-23-12834  
TCEQ DOCKET NO. 2022-0376-MSW-E

EXECUTIVE DIRECTOR OF THE	§	BEFORE THE
TEXAS COMISSION ON	§	
ENVIRONMENTAL QUALITY,	§	
PETITIONER	§	STATE OFFICE OF
VS.	§	
STL DEVELOPER, LLC,	§	
RESPONDENT	§	ADMINISTRATIVE HEARINGS

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

TO THE HONORABLE JUDGE DOGGETT:

COMES NOW, the Executive Director ("ED") of the Texas Commission on Environmental Quality, by and through Marilyn Norrod, 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.<sup>1</sup>

I.

On May 22, 2024, 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. Finding of Fact no. 8 should be deleted and replaced by "During the March 2021 investigation, investigators 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 25 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."<sup>2</sup>

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<sup>1</sup> 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

<sup>2</sup> ED-2 at BP 27 Investigation Report from March 26, 2021, shows that there were 25 used or scrap tires and 7 used or scrap tractor/trailer tires at the site in the first investigation.

2. Finding of Fact No. 11 should be deleted and replaced by “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 13 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.”<sup>3</sup>
3. Ordering Provision No. 1 refers to “this Commission Order”. Ordering Provision No. 2 refers to “this Order” and Ordering Provisions No. 3.a. through 3.e. refer to “the Commission’s Order”. For clarity and consistency, the PFD should be amended to refer to “this Order” in all instances.

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<sup>3</sup> ED-1 at BP 4 Investigation Report from February 17, 2022, shows that additional tires were added to the pile of MSW to equal approximately 45 scrap or used tires that were a mix of passenger, tractor and commercial tires.

II.

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

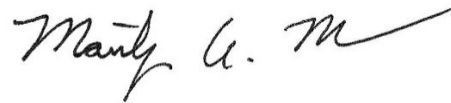
Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel  
Executive Director

Erin E. Chancellor, Director  
Office of Legal Services

Gitanjali Yadav, Deputy Director  
Litigation Division



by: \_\_\_\_\_  
Marilyn Norrod  
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)  
[Marilyn.Norrod@tceq.texas.gov](mailto:Marilyn.Norrod@tceq.texas.gov)

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 2024, 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:

Eddie Lewis, Attorney at Law  
Norton Rose Fulbright US LLP  
1301 McKinney, Suite 5100  
Houston, Texas 77010-3095  
[Eddie.Lewis@nortonrosefulbright.com](mailto:Eddie.Lewis@nortonrosefulbright.com)

Via Electronic Mail

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

Via Electronic Filing

Eli Martinez  
Office of Public Interest Counsel, MC 103  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
[Eli.Martinez@tceq.texas.gov](mailto:Eli.Martinez@tceq.texas.gov)

Via Electronic Mail



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Marilyn Norrod, Staff Attorney  
Texas Commission on Environmental Quality  
Office of Legal Services, Litigation Division

**ATTACHMENT 1**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER  
ASSESSING ADMINISTRATIVE PENALTIES AGAINST  
AND REQUIRING CORRECTIVE ACTION BY  
STL DEVELOPER, LLC  
TCEQ DOCKET NO. 2022-0376-MSW-E;  
SOAH DOCKET NO. 582-23-12834**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's (ED) First Amended Report and Petition (EDFARP) recommending that the Commission enter an enforcement order assessing an administrative penalty against and requiring certain corrective actions be taken by STL Developer, LLC (Respondent). A Proposal for Decision (PFD) was issued by Shelly M. Doggett, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the EDFARP on January 16, 2024.

After considering the ALJ's PFD, the Commission makes the following findings of fact and conclusions of law.

## VII. FINDINGS OF FACT

1. Respondent has owned the subject property, which consists of approximately 66 acres located west and southwest of the intersection of Mines Road and North America Road in Laredo, Webb County, Texas (the Site), since late 2016.
2. Respondent is developing the Site into an industrial park and residential subdivision.
3. A previously permitted municipal solid waste (MSW) landfill is located at the Site.
4. Starting in April 2018, during development activities, Respondent disturbed and dug into the final cover of the MSW landfill.
5. Respondent excavated material from the landfill and moved it into several piles at the Site.
6. One of the piles Respondent moved at the Site was placed over a creek bed that feeds into the Rio Grande River.
7. In March 2021, TCEQ investigators went to the Site to investigate a complaint that waste was being used to backfill a creek and that unauthorized debris disposal was occurring over a closed landfill.
8. ~~Investigators 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, 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.~~ During the March 2021 investigation, investigators 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 25 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.
9. On July 14, 2021, TCEQ issued a Notice of Violation (NOV) letter to Respondent identifying the following violations: (1) the unauthorized disposal



- of MSW; and (2) failing to prevent the overnight exposure of waste on land over a closed MSW landfill. The NOV also recommended corrective action.
10. In February 2022, TCEQ investigators performed a follow-up investigation at the Site. The investigators observed the same piles and material, which measured approximately 10,610 cubic yards, that had been at the Site during the prior investigation. The material still appeared to be discarded and abandoned and investigators observed that more vegetation appeared to be growing among the piles.
  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, 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. 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 13 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.~~
  12. Respondent did not have written authorization from the Commission to dump or dispose of the material at the Site.
  13. The unauthorized disposal of waste can create or contribute to a nuisance and endanger human health or the environment by attracting vectors and vermin, such as mosquitoes and rodents, and can encourage additional unauthorized dumping or disposal in the area.
  14. On February 28, 2022, an investigator issued an NOV to Respondent identifying the following violations: (1) the unauthorized disposal of MSW; and (2) failing to prevent the overnight exposure of waste on land over a closed MSW landfill. The NOV also required submission of documentation demonstrating compliance with recommended corrective action.
  15. Respondent caused, suffered, allowed, or permitted the unauthorized disposal of approximately 10,610 cubic yards of MSW at the Site.
  16. Respondent disturbed the final cover of a closed MSW landfill without written approval from the ED.

17. Respondent failed to prevent the overnight exposure of waste on land over a closed MSW landfill.
18. On September 20, 2022, the ED filed the ED's Preliminary Report and Petition (EDPRP) and mailed a copy to Respondent at its last address of record known to the Commission.
19. Respondent requested a contested case hearing on the allegations in the EDPRP.
20. On February 6, 2023, the ED filed a letter asking the Commission's Chief Clerk to refer this case to SOAH for hearing. The Chief Clerk docketed the case with SOAH on February 23, 2023, and filed the EDPRP on the same date.
21. On March 21, 2023, SOAH ALJ Doggett issued Order No. 1 providing notice of the preliminary hearing.
22. In advance of the preliminary hearing, the parties filed an agreed motion to waive their appearance at the preliminary hearing, to admit into evidence Exhibits ED-A through ED-D for purposes of notice and jurisdiction, and to adopt the parties' agreed procedural schedule.
23. On April 12, 2023, ALJ Doggett issued Order No. 2 granting the parties' agreed motion to waive appearance at the preliminary hearing, admitting Exhibits ED-A through ED-D for purposes of notice and jurisdiction, adopting the parties' agreed procedural schedule, and setting the matter for hearing on October 24, 2023.
24. On October 18, 2023, ALJ Doggett issued Order No. 3 granting the ED's unopposed motion to continue the evidentiary hearing, which rescheduled the hearing for January 16, 2024.
25. On December 11, 2023, the ED filed the EDFARP and served a copy through Respondent's counsel.
26. Together, the EDFARP and SOAH orders 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 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.

27. The hearing convened via Zoom videoconference on January 16, 2024, before ALJ Doggett and concluded the same day. Attorney Marilyn Norrod represented the ED. Respondent appeared through its representative, Sergio Lara, and was represented by attorneys Eddie Lewis and Paloma Dominguez. Attorney Eli Martinez represented the Office of Public Interest Counsel. The record closed on April 17, 2024, after the parties submitted written closing arguments and discussed, but failed to reach an agreement regarding, mediating the case.
28. The ED proposed administrative penalties of \$4,725 for the violations established.
29. The Commission has adopted a Penalty Policy setting forth its policy regarding the calculation and assessment of administrative penalties, effective January 28, 2021.
30. Under the Penalty Policy, the violation for causing, suffering, allowing, or permitting the unauthorized disposal of MSW and disturbing the final cover of a closed MSW landfill without authorization:
  - a. is appropriately analyzed under the environmental, property, and human health matrix;
  - b. resulted in an adjustment to 15% of the \$25,000 base penalty, as a result of the “Minor” characterization of the violation selected because exposure involved insignificant amounts of pollutants that do not exceed levels protective of human health or environmental receptors;
  - c. is appropriately treated as one discrete violation event for the time period between the February 2022 investigation and the March 17, 2022 screening event; and
  - d. accordingly has a base penalty of \$3,750.
31. Under the Penalty Policy, the violation for failing to ensure that no waste is left exposed overnight for a closed MSW landfill:
  - a. is appropriately analyzed under the environmental, property, and human health matrix;

- b. resulted in an adjustment to 3% of the \$25,000 base penalty, as a result of the “Minor” characterization of the violation selected due to the potential harm for exposure to and leachate of waste from wind or rain; is appropriately treated as one discrete violation event for the time period between the February 2022 investigation and the March 17, 2022 screening event; and
  - c. accordingly has a base penalty of \$750.
- 32. In accordance with the Commission’s Penalty Policy, the total base penalty of \$4,500 is enhanced by 5% due to Respondent’s compliance history, which included one prior notice of violation within the last five years for the same violations.
  - 33. The total payable penalty for the two violations is \$4,725.
  - 34. The \$4,725 administrative penalty was calculated correctly in accordance with the Penalty Policy and is reasonable and justified.
  - 35. The ED also recommended that Respondent be required to take corrective action to bring the Site into compliance, including, as further specified in the Ordering Provisions below, immediately ceasing disposal of any additional MSW; removing all MSW excavated and/or dumped at the Site that is currently above-ground; repairing and maintaining adequate cover; deed recording required information and submitting adequate certification of the same to the Commission; and submitting written certification to the Commission of compliance with all ordered actions.
  - 36. The ED’s proposed corrective action and ordering provisions address the violations at the Site and are appropriate, reasonable, and justified.

## **VIII. CONCLUSIONS OF LAW**

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

3. The administrative penalty may not exceed \$25,000 per violation, per day, for the violations at issue in this case. Tex. Water Code § 7.052(c).
4. In determining the amount of an administrative penalty, Texas Water Code section 7.053 requires the Commission to consider several factors, and the Penalty Policy implements those factors.
5. The Commission may order a violator to take corrective action. Tex. Water Code § 7.073(2).
6. “MSW” includes solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste. Tex. Health & Safety Code § 361.003(20).
7. A “closed MSW landfill” includes a permitted or previously permitted MSW landfill and a MSW landfill which has never been permitted. 30 Tex. Admin. Code § 330.951(3).
8. A person may not “cause, suffer, allow, or permit” the dumping or disposal of MSW without the written authorization of the Commission. 30 Tex. Admin. Code § 330.15(c).
9. A person may not “cause, suffer, allow, or permit” the collection, storage, transportation, processing, or disposal of MSW in such a manner that causes (1) the discharge or imminent threat of discharge of MSW into or adjacent to the waters in the state without obtaining specific authorization for the discharge from the Commission; (2) the creation and maintenance of a nuisance; or (3) the endangerment of the human health and welfare of the environment. 30 Tex. Admin. Code § 330.15(a)(1)-(3).
10. Waste may not be left exposed overnight on land over a closed MSW landfill. 30 Tex. Admin. Code § 330.955(h).
11. The owner of property that includes a closed MSW landfill is prohibited from disturbing the final cover without prior written approval from the ED. 30 Tex. Admin. Code § 330.960.

12. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a PFD with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
13. The ED has the burden of proving the violations in this case and the appropriateness of any proposed technical ordering provisions by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(b).
14. As required by Texas Water Code sections 7.054 and 7.055, and 30 Texas Administrative Code sections 1.11 and 70.104, Respondent was notified of the EDPRP and EDFARP and of the opportunity to request a hearing on the alleged violations and penalties proposed therein.
15. As required by Texas Government Code sections 2001.051(1) and .052; Texas Water Code section 7.058; 1 Texas Administrative Code section 155.401; and 30 Texas Administrative Code sections 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3), Respondent was properly notified of the hearing on the alleged violations, the proposed penalties, and corrective action.
16. The material dumped at and/or moved by Respondent at the Site consisting of plastic bags, lumber, household waste, concrete slabs, clothing and fabric, piping, aluminum, brush, automobile parts, scrap tires, boilers, water heaters, boxes, mattresses, and buckets of spilled oil, among other things, is MSW. Tex. Health & Safety Code § 361.003(20); 30 Tex. Admin. Code § 330.3(90).
17. The MSW landfill located at the Site is a closed MSW landfill. 30 Tex. Admin. Code § 330.951(3).
18. Respondent violated 30 Texas Administrative Code sections 330.15(a) and (c), 330.955(h), and 330.960.
19. The penalty and technical order provisions that the ED proposed for Respondent's violations considered in this case conform to the requirements of Texas Water Code chapter 7 and the Commission's Penalty Policy.
20. Respondent should be assessed a total of \$4,725 in administrative penalties for the violations considered in this case and ordered to take the corrective action proposed by the ED and described in the Ordering Provisions below.

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

1. Within 30 days after the effective date of this ~~Commission Order~~, Respondent shall pay an administrative penalty in the amount of \$4,725 for its violations of 30 Texas Administrative Code sections 330.15(a) and (c), 330.955(h), and 330.960.
2. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: STL Developer, LLC, TCEQ Docket No. 2022-0376-MSW-E" and mailed to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

3. Respondent shall also undertake the following technical requirements:
  - a. Immediately upon the effective date of ~~the Commission's this Order~~, cease disposal of any additional MSW at the Site;
  - b. Within 30 days after the effective date of ~~the Commission's this Order~~, remove all excavated MSW and MSW dumped at the Site that is currently sitting above-ground on the Site and dispose of it at an authorized facility. The excavated MSW includes the approximately 10,610 cubic yards of MSW consisting of plastics, household waste, treated lumber, glass, fabric, PVC piping, automobile parts, concrete, brush, two boilers, two buckets of used oil along with the oil contaminated soil and 45 scrap tires;
  - c. Within 45 days after the effective date of ~~the Commission's this Order~~, repair all exposed waste areas and begin maintaining adequate cover on all landfill units on the Site, in compliance with 30 Texas Administrative Code sections 330.453, 330.960, and 330.957(b);

- d. Within 60 days after the effective date of ~~the Commission's this Order~~, submit final recording of the closed MSW landfill unit to the TCEQ and deed record all required information concerning the existence and current state of the landfill; and
- e. Within 75 days after the effective date of ~~the Commission's this Order~~, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions No. 3.a. through 3.d. The certification 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 fines and imprisonment for knowing violations.”

Respondent shall submit the written certifications and copies of documentation necessary to demonstrate compliance with these Corrective Action Ordering Provisions to:

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

and:

Waste Section Manager  
Laredo Regional Office  
Texas Commission on Environmental Quality  
707 East Calton Road, Suite 304  
Laredo, Texas 78041-3887



4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas 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.
5. 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 herein, are hereby denied.
6. The effective date of this Order is the date the Order is final. Tex. Gov't Code § 2001.144; 30 Tex. Admin. Code § 80.273.
7. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. 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**

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**Jon Niermann, Chairman**  
**For the Commission**

**ATTACHMENT 2**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER  
ASSESSING ADMINISTRATIVE PENALTIES AGAINST  
AND REQUIRING CORRECTIVE ACTION BY  
STL DEVELOPER, LLC  
TCEQ DOCKET NO. 2022-0376-MSW-E;  
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On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's (ED) First Amended Report and Petition (EDFARP) recommending that the Commission enter an enforcement order assessing an administrative penalty against and requiring certain corrective actions be taken by STL Developer, LLC (Respondent). A Proposal for Decision (PFD) was issued by Shelly M. Doggett, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the EDFARP on January 16, 2024.

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## VII. FINDINGS OF FACT

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4. Starting in April 2018, during development activities, Respondent disturbed and dug into the final cover of the MSW landfill.
5. Respondent excavated material from the landfill and moved it into several piles at the Site.
6. One of the piles Respondent moved at the Site was placed over a creek bed that feeds into the Rio Grande River.
7. In March 2021, TCEQ investigators went to the Site to investigate a complaint that waste was being used to backfill a creek and that unauthorized debris disposal was occurring over a closed landfill.
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10. In February 2022, TCEQ investigators performed a follow-up investigation at the Site. The investigators observed the same piles and material, which

measured approximately 10,610 cubic yards, that had been at the Site during the prior investigation. The material still appeared to be discarded and abandoned and investigators observed that more vegetation appeared to be growing among the piles.

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 13 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.
12. Respondent did not have written authorization from the Commission to dump or dispose of the material at the Site.
13. The unauthorized disposal of waste can create or contribute to a nuisance and endanger human health or the environment by attracting vectors and vermin, such as mosquitoes and rodents, and can encourage additional unauthorized dumping or disposal in the area.
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16. Respondent disturbed the final cover of a closed MSW landfill without written approval from the ED.
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19. Respondent requested a contested case hearing on the allegations in the EDPRP.
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22. In advance of the preliminary hearing, the parties filed an agreed motion to waive their appearance at the preliminary hearing, to admit into evidence Exhibits ED-A through ED-D for purposes of notice and jurisdiction, and to adopt the parties' agreed procedural schedule.
23. On April 12, 2023, ALJ Doggett issued Order No. 2 granting the parties' agreed motion to waive appearance at the preliminary hearing, admitting Exhibits ED-A through ED-D for purposes of notice and jurisdiction, adopting the parties' agreed procedural schedule, and setting the matter for hearing on October 24, 2023.
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25. On December 11, 2023, the ED filed the EDFARP and served a copy through Respondent's counsel.
26. Together, the EDFARP and SOAH orders 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 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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Sergio Lara, and was represented by attorneys Eddie Lewis and Paloma Dominguez. Attorney Eli Martinez represented the Office of Public Interest Counsel. The record closed on April 17, 2024, after the parties submitted written closing arguments and discussed, but failed to reach an agreement regarding, mediating the case.

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30. Under the Penalty Policy, the violation for causing, suffering, allowing, or permitting the unauthorized disposal of MSW and disturbing the final cover of a closed MSW landfill without authorization:
  - a. is appropriately analyzed under the environmental, property, and human health matrix;
  - b. resulted in an adjustment to 15% of the \$25,000 base penalty, as a result of the “Minor” characterization of the violation selected because exposure involved insignificant amounts of pollutants that do not exceed levels protective of human health or environmental receptors;
  - c. is appropriately treated as one discrete violation event for the time period between the February 2022 investigation and the March 17, 2022 screening event; and
  - d. accordingly has a base penalty of \$3,750.
31. Under the Penalty Policy, the violation for failing to ensure that no waste is left exposed overnight for a closed MSW landfill:
  - a. is appropriately analyzed under the environmental, property, and human health matrix;
  - b. resulted in an adjustment to 3% of the \$25,000 base penalty, as a result of the “Minor” characterization of the violation selected due to the potential harm for exposure to and leachate of waste from wind or rain;

- c. is appropriately treated as one discrete violation event for the time period between the February 2022 investigation and the March 17, 2022 screening event; and
  - d. accordingly has a base penalty of \$750.
32. In accordance with the Commission's Penalty Policy, the total base penalty of \$4,500 is enhanced by 5% due to Respondent's compliance history, which included one prior notice of violation within the last five years for the same violations.
  33. The total payable penalty for the two violations is \$4,725.
  34. The \$4,725 administrative penalty was calculated correctly in accordance with the Penalty Policy and is reasonable and justified.
  35. The ED also recommended that Respondent be required to take corrective action to bring the Site into compliance, including, as further specified in the Ordering Provisions below, immediately ceasing disposal of any additional MSW; removing all MSW excavated and/or dumped at the Site that is currently above-ground; repairing and maintaining adequate cover; deed recording required information and submitting adequate certification of the same to the Commission; and submitting written certification to the Commission of compliance with all ordered actions.
  36. The ED's proposed corrective action and ordering provisions address the violations at the Site and are appropriate, reasonable, and justified.

## **VIII. CONCLUSIONS OF LAW**

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



3. The administrative penalty may not exceed \$25,000 per violation, per day, for the violations at issue in this case. Tex. Water Code § 7.052(c).
4. In determining the amount of an administrative penalty, Texas Water Code section 7.053 requires the Commission to consider several factors, and the Penalty Policy implements those factors.
5. The Commission may order a violator to take corrective action. Tex. Water Code § 7.073(2).
6. “MSW” includes solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste. Tex. Health & Safety Code § 361.003(20).
7. A “closed MSW landfill” includes a permitted or previously permitted MSW landfill and a MSW landfill which has never been permitted. 30 Tex. Admin. Code § 330.951(3).
8. A person may not “cause, suffer, allow, or permit” the dumping or disposal of MSW without the written authorization of the Commission. 30 Tex. Admin. Code § 330.15(c).
9. A person may not “cause, suffer, allow, or permit” the collection, storage, transportation, processing, or disposal of MSW in such a manner that causes (1) the discharge or imminent threat of discharge of MSW into or adjacent to the waters in the state without obtaining specific authorization for the discharge from the Commission; (2) the creation and maintenance of a nuisance; or (3) the endangerment of the human health and welfare of the environment. 30 Tex. Admin. Code § 330.15(a)(1)-(3).
10. Waste may not be left exposed overnight on land over a closed MSW landfill. 30 Tex. Admin. Code § 330.955(h).
11. The owner of property that includes a closed MSW landfill is prohibited from disturbing the final cover without prior written approval from the ED. 30 Tex. Admin. Code § 330.960.

12. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a PFD with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
13. The ED has the burden of proving the violations in this case and the appropriateness of any proposed technical ordering provisions by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(b).
14. As required by Texas Water Code sections 7.054 and 7.055, and 30 Texas Administrative Code sections 1.11 and 70.104, Respondent was notified of the EDPRP and EDFARP and of the opportunity to request a hearing on the alleged violations and penalties proposed therein.
15. As required by Texas Government Code sections 2001.051(1) and .052; Texas Water Code section 7.058; 1 Texas Administrative Code section 155.401; and 30 Texas Administrative Code sections 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3), Respondent was properly notified of the hearing on the alleged violations, the proposed penalties, and corrective action.
16. The material dumped at and/or moved by Respondent at the Site consisting of plastic bags, lumber, household waste, concrete slabs, clothing and fabric, piping, aluminum, brush, automobile parts, scrap tires, boilers, water heaters, boxes, mattresses, and buckets of spilled oil, among other things, is MSW. Tex. Health & Safety Code § 361.003(20); 30 Tex. Admin. Code § 330.3(90).
17. The MSW landfill located at the Site is a closed MSW landfill. 30 Tex. Admin. Code § 330.951(3).
18. Respondent violated 30 Texas Administrative Code sections 330.15(a) and (c), 330.955(h), and 330.960.
19. The penalty and technical order provisions that the ED proposed for Respondent's violations considered in this case conform to the requirements of Texas Water Code chapter 7 and the Commission's Penalty Policy.
20. Respondent should be assessed a total of \$4,725 in administrative penalties for the violations considered in this case and ordered to take the corrective action proposed by the ED and described in the Ordering Provisions below.

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

1. Within 30 days after the effective date of this Order, Respondent shall pay an administrative penalty in the amount of \$4,725 for its violations of 30 Texas Administrative Code sections 330.15(a) and (c), 330.955(h), and 330.960.
2. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: STL Developer, LLC, TCEQ Docket No. 2022-0376-MSW-E" and mailed to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

3. Respondent shall also undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, cease disposal of any additional MSW at the Site;
  - b. Within 30 days after the effective date of this Order, remove all excavated MSW and MSW dumped at the Site that is currently sitting above-ground on the Site and dispose of it at an authorized facility. The excavated MSW includes the approximately 10,610 cubic yards of MSW consisting of plastics, household waste, treated lumber, glass, fabric, PVC piping, automobile parts, concrete, brush, two boilers, two buckets of used oil along with the oil contaminated soil and 45 scrap tires;
  - c. Within 45 days after the effective date of this Order, repair all exposed waste areas and begin maintaining adequate cover on all landfill units on the Site, in compliance with 30 Texas Administrative Code sections 330.453, 330.960, and 330.957(b);

- d. Within 60 days after the effective date of this Order, submit final recording of the closed MSW landfill unit to the TCEQ and deed record all required information concerning the existence and current state of the landfill; and
- e. Within 75 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions No. 3.a. through 3.d. The certification shall be signed by Respondent and shall include the following certification language:  
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 fines and imprisonment for knowing violations.”

Respondent shall submit the written certifications and copies of documentation necessary to demonstrate compliance with these Corrective Action Ordering Provisions to:

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

and:

Waste Section Manager  
Laredo Regional Office  
Texas Commission on Environmental Quality  
707 East Calton Road, Suite 304  
Laredo, Texas 78041-3887

4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas 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.
5. 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 herein, are hereby denied.
6. The effective date of this Order is the date the Order is final. Tex. Gov't Code § 2001.144; 30 Tex. Admin. Code § 80.273.
7. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. 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**

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**Jon Niermann, Chairman**  
**For the Commission**