

Nahum Peña Bretado
RN111529426
Docket No. 2023-1088-MSW-E

Order Type:
Default Order

Media:
MSW

Small Business:
Yes

Location Where Violation Occurred:
12510 Pellicano Drive, El Paso, El Paso County (the “Site”)

Type of Operation:
unauthorized municipal solid waste disposal site

Other Significant Matters:
Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third Parties: None

Texas Register Publication Date: February 28, 2025

Comments Received: None.

Penalty Information

Total Penalty Assessed: \$7,500

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$7,500

Compliance History Classifications:

Person/CN - High
Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: None

Applicable Penalty Policy: January 28, 2021

Investigation Information

Complaint Date: June 16, 2022

Complaint Information: The TCEQ El Paso Region Office received a response notification regarding an unauthorized activity was occurring within El Paso, County, Texas.

Dates of Investigation: June 30, 2022 to July 6, 2022; January 17, 2023

Date of NOV: N/A

Date of NOE: January 25, 2023

Nahum Peña Bretado
RN111529426
Docket No. 2023-1088-MSW-E

Violation Information

Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste (“MSW”) [30 TEX. ADMIN. CODE § 330.15(a) and (c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately cease the unauthorized disposal of additional MSW including scrap tires at the Site.
2. Within 30 days:
 - a. Remove all MSW including contaminated soil and scrap tires from the Site and dispose of it at an authorized facility; and
 - b. Collect and submit soil samples for analysis to determine if the area has been restored to pre-contaminated conditions.
3. Within 45 days submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Technical Requirement Nos. 1 and 2.

Litigation Information

Date Petition Filed: September 3, 2024;

Date of Service: September 9, 2024

Date Answer Filed: N/A

Contact Information

TCEQ Attorneys: Casey Kurnath, 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: Eunice Adegelu, Enforcement Division, (512) 239-5082

TCEQ Regional Contact: Kent Waggoner, El Paso Regional Office, (915) 834-4949

Respondent Contact: Nahum Peña Bretado, 12510 Pellicano Drive, El Paso, Texas 79928

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	21-Jul-2023	Screening	16-Aug-2023	EPA Due	
	PCW	21-Jun-2024				

RESPONDENT/FACILITY INFORMATION

Respondent	Nahum Peña Bretado
Reg. Ent. Ref. No.	RN111529426
Facility/Site Region	6-El Paso
Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	64509	No. of Violations	1
Docket No.	2023-1088-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Eunice Adegele
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
---	-------------------	---------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	-10.0%	Adjustment	Subtotals 2, 3, & 7	-\$750
---------------------------	--------	-------------------	--------------------------------	--------

Notes Reduction for High Performer classification.

Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
--------------------	----	------	--------------------	-------------------	-----

Notes The Respondent does 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 \$9,182
Estimated Cost of Compliance \$75,653
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,750
-----------------------------	-----------------------	---------

OTHER FACTORS AS JUSTICE MAY REQUIRE	11.1%	Adjustment	\$750
---	-------	-------------------	-------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended adjustment to offset High Performer reduction.

Final Penalty Amount	\$7,500
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,500
-----------------------------------	-------------------------------	---------

DEFERRAL	0.0%	Reduction	Adjustment	\$0
-----------------	------	------------------	-------------------	-----

Reduces the Final Assessed Penalty by the indicated percentage.

Notes Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$7,500
------------------------	---------

Screening Date	16-Aug-2023	Docket No.	2023-1088-MSW-E	PCW
Respondent	Nahum Peña Bretado			Policy Revision 5 (January 28, 2021) PCW Revision February 11, 2021
Case ID No.	64509			
Reg. Ent. Reference No.	RN111529426			
Media	Municipal Solid Waste			
Enf. Coordinator	Eunice Adegele			

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)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 16-Aug-2023		Docket No. 2023-1088-MSW-E		PCW
Respondent Nahum Peña Bretado		Policy Revision 5 (January 28, 2021)		
Case ID No. 64509		PCW Revision February 11, 2021		
Reg. Ent. Reference No. RN111529426				
Media Municipal Solid Waste				
Enf. Coordinator Eunice Adegelu				
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 4,722 cubic yards of MSW consisting of soil contaminated with petroleum substance (used oil), electronic plastic parts, styrofoam, cardboard boxes, keyboards, monitors, computer parts, printers, and approximately 693 scrap tires were disposed of at the Site.		
		Base Penalty		\$25,000

>> Environmental, Property and Human Health Matrix

OR

		Harm			
Release	Major	Moderate	Minor		
Actual			x		
Potential					
					Percent 30.0%

>>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

\$17,500

\$7,500

Violation Events

Number of Violation Events

1

211

Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty

\$7,500

One annual event is recommended from January 17, 2023 record review to the August 16, 2023 screening date.

Good Faith Efforts to Comply

0.0%

Reduction

\$0

Before NOE/NOV

NOE/NOV to EDPRP/Settlement Offer

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal

\$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Economic Benefit Worksheet

Respondent Nahum Peña Bretado
Case ID No. 64509
Reg. Ent. Reference No. RN111529426
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	\$1,000	30-Jun-2022	2-Dec-2024	2.43	\$121	n/a	\$121
Remediation/Disposal	\$74,653	30-Jun-2022	2-Dec-2024	2.43	\$9,061	n/a	\$9,061
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 4,722 cubic yards of MSW including contaminated soil (\$71,188) and scrap tires (\$3,465 for 693 tires at a removal cost of \$5 per tire), and dispose of it at an authorized facility, and to collect and submit soil samples for analysis (\$1,000). The Date Required is the initial 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	\$75,653			TOTAL		\$9,182	



Compliance History Report

Compliance History Report for CN606035624, RN111529426, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator:	CN606035624, Bretado, Nahum Pena	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN111529426, EPCAD PROPERTY ID 201072	Classification: HIGH	Rating: 0.00
Complexity Points:	1	Repeat Violator:	NO
CH Group:	14 - Other		
Location:	12510 PELLICANO DRIVE, EL PASO, EL PASO COUNTY, TEXAS 79928-5626		
TCEQ Region:	REGION 06 - EL PASO		
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R06111529426		
Compliance History Period:	September 01, 2018 to August 31, 2023	Rating Year: 2023	Rating Date: 09/01/2023
Date Compliance History Report Prepared:	April 18, 2024		
Agency Decision Requiring Compliance History:	Enforcement		
Component Period Selected:	April 18, 2019 to April 18, 2024		
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.			
Name:	Eunice Adegelu	Phone:	(512) 239-5082

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
NAHUM PEÑA BRETADO;
RN111529426

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

DEFAULT ORDER

DOCKET NO. 2023-1088-MSW-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 ch. 361 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Nahum Peña Bretado ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates an unauthorized municipal solid waste disposal site located at 12510 Pellicano Drive in El Paso, El Paso County, Texas (the "Site"). The Site contains and/or involves the management of municipal solid waste ("MSW"), including scrap tires, as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on June 30, 2022, to July 6, 2022, and a record review conducted on January 17, 2023, an investigator documented that Respondent caused, suffered, allowed, or permitted the unauthorized disposal of MSW. Specifically, approximately 4,722 cubic yards of MSW consisting of soil contaminated with petroleum substance (used oil), electronic plastic parts, Styrofoam, cardboard boxes, keyboards, monitors, computer parts, printers, and approximately 693 scrap tires were disposed of 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 Nahum Peña Bretado" (the "EDPRP") in the TCEQ Chief Clerk's office on September 3, 2024.
4. By letter dated September 3, 2024, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on September 9, 2024, as evidenced by the signature on the card.
5. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the TCEQ.

2. As evidenced by Finding of Fact No. 2, Respondent 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 Findings of Fact Nos. 3 and 4, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
4. As evidenced by Finding of Fact No. 5, Respondent 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 Respondent and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent 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.
6. An administrative penalty in the amount of \$7,500 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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. Respondent is assessed an administrative penalty in the amount of \$7,500 for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's 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: Nahum Peña Bretado; Docket No. 2023-1088-MSW-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. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, cease the unauthorized disposal of additional MSW, including scrap tires, at the Site.
 - b. Within 30 days after the effective date of this Order:
 - i. Remove all MSW, including contaminated soil and scrap tires from the Site and dispose of it at an authorized facility; and
 - ii. Collect and submit soil samples for analysis to determine if the area has been restored to pre-contaminated conditions.
 - c. Within 45 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 Provision Nos. 3.a.

and 3.b. 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 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
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1212

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent.
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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives 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 Respondent fails 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent 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 Respondent if the Executive Director determines that Respondent has 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



UNSWORN DECLARATION OF CASEY KURNATH

"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 Nahum Peña Bretado' (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 3, 2024.

The EDPRP was mailed to Respondent's last known address on September 3, 2024, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card" Respondent received notice of the EDPRP on September 9, 2024, as evidenced by the signature on the card.

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

"My name is Casey Kurnath, 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 9th day of January, 2025

Casey Kurnath

Declarant