

Felipe Guajardo

RN110024684

Docket No. 2023-1280-MSW-E

Order Type:
Default Order**Media:**
MSW**Small Business:**
Yes**Location Where Violation Occurred:**
Mile 12.5 and North Western Road, Mission, Hidalgo County (the "Site")**Type of Operation:**
unauthorized municipal solid waste site**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	\$2,625
Past-Due Fees:	\$656.25
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: September 13, 2024**Comments Received:** None**Penalty Information****Total Penalty Assessed:** \$35,437**Total Paid to General Revenue:** \$0**Total Due to General Revenue:** \$35,437**Compliance History Classifications:**

Person/CN - Unsatisfactory
Site/RN - Unsatisfactory

Major Source: No**Statutory Limit Adjustment:** None**Applicable Penalty Policy:** January 28, 2021**Investigation Information****Complaint Dates:** N/A**Dates of Investigation:** December 1, 2021 through February 3, 2022**Date of NOV:** N/A**Date of NOE:** March 11, 2022

Felipe Guajardo
RN110024684
Docket No. 2023-1280-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); TCEQ Default Order Docket No. 2018-1449-MSW-E, Ordering Provision Nos. 3.b. and 3.c.].

Corrective Actions/Technical Requirements

Corrective Actions Completed:

None

Technical Requirements:

1. Immediately cease disposal of any additional MSW at the Site.
2. Within 30 days remove all unauthorized MSW 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 Filed: February 16, 2024

Date of Service: February 27, 2024

Contact Information

TCEQ Attorneys: Alexander Kepczyk, 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: Eresha DeSilva, Enforcement Division, (512) 239-5084

TCEQ Regional Contact: Monica Galvan, Harlingen Regional Office, (956) 425-6010

Respondent Contact: Felipe Guajardo, 123 Sunset Street, Rio Grande City, Texas 78582

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	7-Sep-2023	Screening	8-Sep-2023	EPA Due	
	PCW	14-Sep-2023				

RESPONDENT/FACILITY INFORMATION	
Respondent	Felipe Guajardo
Reg. Ent. Ref. No.	RN110024684
Facility/Site Region	15-Harlingen
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	56820	No. of Violations	1
Docket No.	2023-1280-MSW-E	Order Type	Findings
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Eresha DeSilva
		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	\$26,250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	35.0%	Adjustment	Subtotals 2, 3, & 7	\$9,187
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Notes: Enhancement for Unsatisfactory Performer classification and for one default order.

Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$3,349
 Estimated Cost of Compliance: \$16,542
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$35,437
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$35,437
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$35,437
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$35,437
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Screening Date 8-Sep-2023**Docket No.** 2023-1280-MSW-E**PCW****Respondent** Felipe Guajardo

Policy Revision 5 (January 28, 2021)

Case ID No. 56820

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN110024684**Media** Municipal Solid Waste**Enf. Coordinator** Eresha DeSilva**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	1	25%
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) 25%**>> Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%**>> Compliance History Person Classification (Subtotal 7)**

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%**>> Compliance History Summary****Compliance History Notes**

Enhancement for Unsatisfactory Performer classification and for one default order.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 35%**>> Final Compliance History Adjustment****Final Adjustment Percentage *capped at 100%** 35%

Screening Date 8-Sep-2023
Respondent Felipe Guajardo
Case ID No. 56820
Reg. Ent. Reference No. RN110024684
Media Municipal Solid Waste
Enf. Coordinator Eresha DeSilva

Docket No. 2023-1280-MSW-E

PCW

*Policy Revision 5 (January 28, 2021)
 PCW Revision February 11, 2021*

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 330.15(a) and (c) and TCEQ Docket No. 2018-1449-MSW-E, Ordering Provision Nos. 3.b and 3.c

Violation Description Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 1,581 cubic yards of MSW consisting of pallets, an out-of-service bailer, irrigation hose and liners were disposed of at the Site.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

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 7 1179 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	X
annual	
single event	

Violation Base Penalty \$26,250

Seven semiannual events are recommended from the June 16, 2020 effective date of the previous order to the September 8, 2023 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 Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$26,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,349

Violation Final Penalty Total \$35,438

This violation Final Assessed Penalty (adjusted for limits) \$35,438

Economic Benefit Worksheet

Respondent Felipe Guajardo
Case ID No. 56820
Reg. Ent. Reference No. RN110024684
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
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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)	\$16,542	16-Jun-2020	3-Jul-2024	4.05	\$3,349	n/a	\$3,349

Notes for DELAYED costs

Estimated cost to remove all MSW from the Site and dispose of it at an authorized facility. The Date Required is the effective date of the previous order, 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 \$16,542

TOTAL \$3,349



Compliance History Report

Compliance History Report for CN605435122, RN110024684, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator:	CN605435122, GUAJARDO, FELIPE	Classification:	UNSATISFACTORY	Rating:	75.00
Regulated Entity:	RN110024684, TEXAN GARDENS LT 7 BLK 40	Classification:	UNSATISFACTORY	Rating:	75.00
Complexity Points:	0	Repeat Violator:	NO		
CH Group:	14 - Other				
Location:	MILE 12.5 NORTH WESTERN RD MISSION TEXAS 78574 HIDALGO, TX, HIDALGO COUNTY				
TCEQ Region:	REGION 15 - HARLINGEN				
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R15110024684				
Compliance History Period:	September 01, 2018 to August 31, 2023	Rating Year:	2023	Rating Date:	09/01/2023
Date Compliance History Report Prepared:	December 29, 2023				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	December 29, 2018 to December 29, 2023				
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.					
Name:	Eresha DeSilva			Phone:	(512) 239-5084

Site and Owner/Operator History:

- | | |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period? | YES |
| 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:

- | | | |
|---|--|---|
| 1 | Effective Date: 06/16/2020 | ADMINORDER 2018-1449-MSW-E (Findings Order-Default) |
| | Classification: Moderate | |
| | Citation: 30 TAC Chapter 330, SubChapter A 330.15(a) | |
| | 30 TAC Chapter 330, SubChapter A 330.15(c) | |
| | Description: Caused, suffered, allowed, or permitted the unauthorized disposal of MSW. | |

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
FELIPE GUAJARDO;
RN110024684**

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§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2023-1280-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 Felipe Guajardo (“Respondent”).

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

FINDINGS OF FACT

1. Respondent owns an unauthorized municipal solid waste (“MSW”) site located at Mile 12.5 and North Western Road in Mission, Hidalgo County, Texas (the “Site”). The Site contains and/or involves the management of MSW, as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted from approximately December 1, 2021, through February 3, 2022, an investigator documented that Respondent caused, suffered, allowed, or permitted the unauthorized disposal of MSW. Specifically, approximately 1,581 cubic yards of MSW, consisting of pallets, an out-of-service bailer, irrigation hose and liners 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 Felipe Guajardo” (the “EDPRP”) in the TCEQ Chief Clerk’s office on February 16, 2024.
4. By letter dated February 16, 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 February 27, 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 AND SAFETY CODE 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) and TCEQ Docket No. 2018-1449-MSW-E, Ordering Provision Nos. 3.b. and 3.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 \$35,437 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 \$35,437 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: Felipe Guajardo; Docket No. 2023-1280-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 disposal of any additional MSW at the Site;
 - b. Within 30 days after the effective date of this Order, remove all unauthorized MSW from the Site and dispose of it at an authorized facility; and

- 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 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.”
4. 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
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247
5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Respondent.
7. 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.
8. 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.
9. 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.
10. 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.

11. 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.
12. 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 ALEXANDER R. KEPCZYK

"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 Felipe Guajardo' (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 16, 2024.

The EDPRP was mailed to Respondent's last known address on February 16, 2024, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on February 27, 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 Alexander R Kepczyk, 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 20th day of June, 2024

Alexander Kepczyk

Declarant

COMISIÓN DE CALIDAD AMBIENTAL DE TEXAS



EN LO REFERENTE A UNA
ACCIÓN EJECUTORIA EN
RELACIÓN CON
FELIPE GUAJARDO;
RN110024684

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ANTE LA
COMISIÓN DE CALIDAD
AMBIENTAL DE TEXAS

SENTENCIA EN REBELDÍA EXPEDIENTE NO. 2023-1280-MSW-E

El _____, la Comisión de Calidad Ambiental de Texas (“la Comisión” o “la TCEQ”) consideró el Informe Preliminar y Petición de la Directora Ejecutiva, presentados de conformidad con el cap. 7 del CÓDIGO DE AGUAS DE TEXAS, el cap. 361 del CÓDIGO DE SALUD Y SEGURIDAD DE TEXAS y las normas de la TCEQ, los cuales solicitan la reparación adecuada, incluida la imposición de una sanción administrativa y una acción correctiva del demandado. El demandado a quien se refiere esta sentencia es Felipe Guajardo (“el Demandado”).

La Comisión formula las siguientes Conclusiones de Hecho y de Derecho:

CONCLUSIONES DE HECHO

1. El Demandado es propietario de un sitio no autorizado de desechos sólidos municipales (MSW, por sus siglas en inglés) ubicado en la Milla 12.5 y North Western Road en Mission, Condado de Hidalgo, Texas (el "Sitio"). El Sitio contiene o involucre el control de MSW como lo define el cap. 361 del CÓDIGO DE SALUD Y SEGURIDAD DE TEXAS.
2. Durante una investigación realizada desde aproximadamente el 1 de diciembre de 2021 hasta el 3 de febrero de 2022, un investigador documentó que el Demandado ocasionó, experimentó, permitió o propició la eliminación no autorizada de MSW. En específico, aproximadamente 1581 yardas cúbicas de MSW (compuestas de mangueras de riego, estibas de madera y una empacadora fuera de servicio) se eliminaron en el Sitio.
3. La Directora Ejecutiva presentó el “Informe Preliminar y Petición de Recomendación para que la Comisión de Calidad Ambiental de Texas Emita una Sentencia de Cumplimiento que Imponga una Sanción Administrativa y Requiera Ciertas Acciones de parte de Felipe Guajardo” (el “EDPRP,” por sus siglas en inglés) ante la Secretaría Oficial de la TCEQ el 16 de febrero de 2024.
4. Mediante una carta con fecha del 16 de febrero de 2024, enviada a la a la última dirección postal conocida del Demandado por correo certificado con acuse de recibo y franqueo prepagado, la Directora Ejecutiva dio aviso al Demandado del EDPRP. De acuerdo con la “tarjeta verde” del acuse de recibo, el Demandado recibió el aviso del EDPRP el 27 de febrero de 2024, como lo demuestra la firma en la tarjeta.
5. Han transcurrido más de 20 días desde que el Demandado recibió el aviso del EDPRP. El Demandado no ha presentado una respuesta ni ha solicitado una audiencia.

CONCLUSIONES DE DERECHO

1. Como se demuestra en la Conclusión de Hecho No. 1, el Demandado está sujeto a la jurisdicción de la TCEQ de conformidad con el cap. 361 del CÓDIGO DE SALUD Y SEGURIDAD DE TEXAS y las normas de la TCEQ.

2. Como se demuestra en la Conclusión de Hecho No. 2, el demandado causó, experimentó, permitió o propició la eliminación no autorizada de MSW, infringiendo la sección 330.15(a) y (c) del TÍTULO 30 DEL CÓDIGO ADMVO. DE TEXAS así como las Disposiciones de Sentencia No. 3.b. y 3.c. del Expediente de la TCEQ No. 2018-1449-MSW-E.
3. Como lo demuestran las Conclusiones de Hecho No. 3 y 4, la Directora Ejecutiva notificó apropiada y oportunamente al Demandado del EDPRP, como lo requiere la sección 7.055 del CÓDIGO DE AGUAS DE TEXAS y la sección 70.104(b)(1) del TÍTULO 30 DEL CÓDIGO ADMVO. DE TEXAS.
4. Como se demuestra en la Conclusión de Hecho No. 5, el Demandado no presentó una respuesta puntual como lo requiere la sección 7.056 del CÓDIGO DE AGUAS DE TEXAS y la sección 70.105 del TÍTULO 30 DEL CÓDIGO ADMVO. DE TEXAS. De conformidad con la sección 7.057 del CÓDIGO DE AGUAS DE TEXAS y la sección 70.106 del TÍTULO 30 DEL CÓDIGO ADMVO. DE TEXAS, la Comisión puede dictar una Sentencia en Rebeldía en contra de la Demandada y emitir la sanción recomendada por la Directora Ejecutiva.
5. De conformidad con la sección 7.051 del CÓDIGO DE AGUAS DE TEXAS, la Comisión tiene la autoridad de imponer una sanción administrativa en contra de la Demandada por infracciones a estatutos estatales dentro de la jurisdicción de la TCEQ, por infracciones a normas adoptadas bajo dichos estatutos o por infracciones de órdenes o permisos emitidos bajo dichos estatutos.
6. Una sanción administrativa por la suma de USD 35 437 está justificada por los hechos mencionados en esta Sentencia, y considerada a la luz de los factores establecidos en la sección 7.053 del CÓDIGO DE AGUAS DE TEXAS.
7. Las secciones 5.102 y 7.002 del CÓDIGO DE AGUAS DE TEXAS autorizan a la Comisión a emitir órdenes y a llevar a cabo las determinaciones necesarias para efectuar los propósitos de los estatutos dentro de su jurisdicción.

DISPOSICIONES DE LA SENTENCIA

AHORA, POR LO TANTO, LA COMISIÓN DE CALIDAD AMBIENTAL DE TEXAS ORDENA que:

1. Se le imponga al Demandado una sanción administrativa por la suma de USD 35 437 por infringir los estatutos estatales y las normas de la TCEQ. El pago de esta sanción y el cumplimiento de la Demandada de todos los requisitos establecidos en esta Sentencia resuelven únicamente los hechos establecidos por esta Sentencia en esta acción. La Comisión no podrá verse impedida en modo alguno para exigir medidas correctivas o sanciones por infracciones que no se planteen aquí.
2. La sanción impuesta por esta Sentencia se pagará dentro de los 30 días posteriores a la fecha de entrada en vigor de ésta. Todos los cheques presentados para saldar el monto de la sanción impuesta por esta Sentencia deberán hacerse pagaderos a la TCEQ y deberán enviarse con la anotación "Re: Felipe Guajardo; Docket No. 2023-1280-MSW-E" a:

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. El Demandado deberá cumplir con los siguientes requisitos técnicos:
 - a. Inmediatamente después de la fecha de entrada en vigor de esta Sentencia, cesar la eliminación de cualquier MSW adicional en el Sitio.

- b. Dentro de los 30 días posteriores a la fecha de entrada en vigor de esta Sentencia, retirar todos los MSW no autorizados del Sitio y desecharlos en una instalación autorizada.
- c. Dentro de los 45 días posteriores a la entrada en vigor de esta Sentencia, presentar certificación por escrito para demostrar el cumplimiento con las Disposiciones de la Sentencia No. 3.a y 3.b., la cual deberá ir acompañada de documentación de apoyo detallada (fotografías, recibos de pago u otros registros inclusive), estar firmada por la Demandada e incluir el siguiente texto de certificación (en inglés):

“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.” (*“Certifico bajo pena de ley que he examinado personalmente y estoy familiarizada con la información presentada y con todos los documentos anexos, y que con base en mi indagación a aquellas personas inmediatamente responsables de obtener la información, creo que la información presentada es veraz, precisa y completa. Estoy conscientes de que existen sanciones significativas por presentar información falsa, incluida la posibilidad de multas y prisión por conocer las infracciones.”*)
4. La certificación por escrito y la documentación de respaldo necesaria para demostrar el cumplimiento con estas Disposiciones de Sentencia deberán enviarse a:

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

y a:

Waste Section Manager
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247
5. Se deniega toda reparación que no se haya concedido expresamente en esta Sentencia.
6. Las disposiciones en esta Sentencia se aplicarán y serán vinculantes para la Demandada.
7. La Directora Ejecutiva podría conceder una extensión de cualquier plazo en esta Sentencia o de cualquier plan, informe u otro documento presentado de conformidad con esta Sentencia, previa demostración fundamentada y por escrito de una causa justificada. Todas las solicitudes de extensiones de los Demandados se realizarán por escrito a la Directora Ejecutiva. Las extensiones no serán vigentes hasta que los Demandados reciban aprobación por escrito de la Directora Ejecutiva. La determinación de lo que constituye una causa justificada recae exclusivamente en la Directora Ejecutiva. Las solicitudes de extensión se enviarán a la División de Cumplimiento a la dirección antes mencionada.

8. Si el Demandado no cumple con alguna de las Disposiciones de esta Sentencia dentro de los plazos prescritos, y dicho incumplimiento es causado únicamente por una fuerza mayor, una guerra, una huelga, un disturbio o cualquier otra catástrofe, el incumplimiento por parte de el Demandado no será una violación de esta Sentencia. El Demandado tendrá la carga de demostrar, a satisfacción de la Directora Ejecutiva, que el hecho ha tenido lugar. El Demandado deberá dar aviso a la Directora Ejecutiva dentro de los siete días posteriores a la fecha en que el Demandado se haya percatado de un suceso de retraso y tomará todas las medidas razonables para mitigar y minimizar cualquier retraso
9. La Directora Ejecutiva podría remitir este asunto a la Oficina del Procurador General de Texas ("OAG," por sus siglas en inglés) para más procedimientos de ejecución sin previo aviso a la Demandada si la Directora Ejecutiva determina que la Demandada no ha cumplido con uno o más de los términos o condiciones en esta Sentencia.
10. Las disposiciones en esta Sentencia se consideran divisibles y, si un juzgado de jurisdicción competente u otra autoridad apropiada considera que cualquier disposición en esta Sentencia es inejecutable, las disposiciones restantes serán válidas y ejecutables.
11. Esta Sentencia expirará cinco años después de su fecha de entrada en vigor o tras el cumplimiento de todos los términos y condiciones expuestos en la misma, lo que se produzca más tarde.
12. La Secretaria Oficial proporcionará una copia de esta Sentencia ejecutada en su totalidad a cada una de las partes. Por ley, la fecha de entrada en vigor de esta Sentencia será la fecha en que la Sentencia sea final, como se indica en la sección 70.106(d) del TÍTULO 30 DEL CÓDIGO ADMVO. DE TEXAS y la sección 2001.144 del CÓDIGO DE GOBIERNO DE TEXAS.

P Á G I N A D E F I R M A S

COMISIÓN DE CALIDAD AMBIENTAL DE TEXAS

Por la Comisión

Fecha

COMISIÓN DE CALIDAD AMBIENTAL DE TEXAS



DECLARACIÓN NO JURADA DE ALEXANDER R. KEPczyk

En nombre de la Directora Ejecutiva de la Comisión de Calidad Ambiental de Texas, se presentó el 'Informe Preliminar y Petición de Recomendación para que la Comisión de Calidad Ambiental de Texas Emita una Sentencia de Cumplimiento que Imponga una Sanción Administrativa y Requiera Ciertas Acciones de parte de Felipe Guajardo' (el "EDPRP") ante la Secretaría Oficial el 16 de febrero de 2024.

Se envió el EDPRP a la última dirección conocida del Demandado por correo certificado con acuse de recibo y franqueo prepagado. De acuerdo con la "tarjeta verde" del acuse de recibo, el Demandado recibió aviso del EDPRP el 27 de febrero de 2024, como lo demuestra la firma en la tarjeta.

Han transcurrido más de 20 días desde que el Demandado recibió el aviso del EDPRP. El Demandado no presentó una respuesta ni solicitó una audiencia".

"Mi nombre es Alexander R Kepczyk y soy un empleado de la siguiente agencia gubernamental: la Comisión de Calidad Ambiental de Texas. Estoy ejecutando esta declaración como parte de mis deberes y responsabilidades asignados. Declaro bajo pena de perjurio que lo anterior es correcto y verdadero".

Ejecutada en el Condado de Travis ,

Estado de Texas,

El día 20 de Junio de 2024

Alexander Kepczyk

Declarante