EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0326-MSW-E **TCEQ ID:** RN100215599 **CASE NO.:** 32858

RESPONDENT NAME: City of El Paso

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
X MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: McCombs Municipal Landfill, 13600 McCombs Street, El Paso, El Paso County

TYPE OF OPERATION: Type I municipal solid waste landfill

SMALL BUSINESS: ___ Yes _X_ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on October 1, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768

TCEQ Enforcement Coordinator: Mr. Colin Barth, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0086; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468

Respondent: Ms. Ellen Smyth, Director, City of El Paso, 7969 San Paulo, Suite 136, El Paso, Texas 79907
Ms. Joyce A. Wilson, City Manger, City of El Paso, 7969 San Paulo, Suite 136, El Paso, Texas 79907

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up _X_ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigations/Record Review Relating to this Case:** June 8, 2006 and January 23, 2007; March 6, 2007 **Date of NOV Relating to this Case:** January 26, 2007 (NOE) **Background Facts:** This was a routine investigation. Four significant program violations were observed. **WASTE** 1) Failure to prevent the concentration of methane gas from exceeding 5% by volume in monitoring points and probes at the facility's property boundary. Specifically, landfill gas (LFG) monitoring reports for gas monitoring probes GMP-2 and GMP-3 indicate that methane gas concentration has exceeded the regulatory limit of 5% since 2003. LFG for GMP-2 and GMP-3 was reported as high as 8.8% and 26.3% in 2003, 11.0% and 10.4% in 2004, 17.6% and 18% in 2005, and 11.7% and 15.9% in 2006 [30 TEX. ADMIN. CODE § 330.371(a)(2) [formerly 30 TEX. ADMIN. CODE § 330.56(n)(1)(B)]]. 2) Failure to have a landfill gas management plan that includes a backup plan to be used if the main system breaks down or becomes ineffective. Specifically, the Landfill Gas Management Plan approved October 27, 2003 did not include a backup plan [30 TEX. ADMIN. CODE § 330.371(g)(3) [formerly 30 TEX. ADMIN. CODE § 330.56(n)(7)(C)]]. 3) Failure to post yellow landfill buffer zone markers. Specifically, yellow buffer zone markers on the west side of the facility need to be moved to the east side of the access road to allow for protection of a 50 foot buffer zone. Landfill markers were	**Total Assessed:** $23,100 **Total Deferred:** $4,620 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $18,480 **Total Paid to General Revenue:** $18,480 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** 1) The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility: a) On August 16, 2006, landfill markers were properly placed; b) On October 10, 2006, the Respondent submitted a Gas Remediation Plan to the TCEQ; and c) On November 16, 2006, the Respondent installed five passive vents in the area of concern and on January 18, 2007, the City installed solar powered ventilators on the five passive vents. **Ordering Provisions:** 2) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A). 3) The Order will require the Respondent to: a) Within 15 days after the effective date of this Agreed Order, develop and implement a methane gas management backup plan to address any exceedances of methane regulatory levels; b) Within 30 days after the effective date of this Agreed Order, certify that methane gas concentration levels are below regulatory levels; c) Within 30 days after the effective date of this Agreed Order, submit payment for outstanding fees, including any associated penalties and interest; and d) Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records

properly placed on August 16, 2006 [30 TEX. ADMIN. CODE § 330.143(b)(1)(B) [formerly 30 TEX. ADMIN. CODE § 330.122]]. 4) Failure to pay outstanding fees for the TCEQ Financial Account Nos. 0005288U, 0030987A, 0030987U, 20000846, 20001267, and 20015245 for fiscal year 2007 [30 TEX. ADMIN. CODE §§ 205.6, 334.22(a), and 334.128(a), and TEXAS WATER CODE § 5.702].		to demonstrate compliance with Ordering Provision No. 3.a. through 3.c.

Attachment A
Docket Number: 2007-0326-MSW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**City of El Paso**
Penalty Amount:	**Eighteen Thousand Four Hundred Eighty Dollars ($18,480)**
SEP Amount:	**Eighteen Thousand Four Hundred Eighty Dollars ($18,480)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Keep Texas Beautiful-Cleanup of Unauthorized Trash Dumps**
Location of SEP:	**El Paso County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Amount to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, Keep Texas Beautiful shall use the funds for the Cleanup of Unauthorized Trash Dumps project in El Paso County. The cleanup project shall promote the cleanup of unauthorized trash dumps by supplying project coordination, labor, supplies, and materials for cleanup events and by providing assistance with disposal fees for proper disposal of wastes collected at the events.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping to rid communities of the dangers and health threats associated with non-regulated dumping which contaminates air, land, and water, and harbors animals and insects that may carry disease.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Keep Texas Beautiful
Attn: Katie Sternberg, Programs Director
P.O. Box 2251
Austin, Texas 78768

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

In the event of incomplete performance, the check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision January 9, 2007*

TCEQ

DATES					
Assigned	5-Feb-2007				
PCW	6-Mar-2007	Screening	28-Feb-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	City of El Paso		
Reg. Ent. Ref. No.	RN100215599		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	32858	No. of Violations	4
Docket No.	2007-0326-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Colin Barth
Multi-Media		EC's Team	EnforcementTeam 8
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $21,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 10% Enhancement *Subtotals 2, 3, & 7* $2,100

Notes: The Respondent has received two NOVs for same or similar violations at this site during the past five years.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction *Subtotal 5* $0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

0% Enhancement* *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$1,398
Approx. Cost of Compliance	$6,500

SUM OF SUBTOTALS 1-7 *Final Subtotal* $23,100

OTHER FACTORS AS JUSTICE MAY REQUIRE *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $23,100

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* $23,100

DEFERRAL 20% Reduction *Adjustment* -$4,620

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $18,480

Screening Date 28-Feb-2007 **Docket No.** 2007-0326-MSW-E **PCW**

Respondent City of El Paso

Case ID No. 32858

Reg. Ent. Reference No. RN100215599

Media [Statute] Municipal Solid Waste

Enf. Coordinator Colin Barth

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*number of judgements or consent decrees meeting criteria*)	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 (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	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 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
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) 10%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent has received two NOVs for same or similar violations at this site during the past five years.

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

Screening Date	28-Feb-2007	**Docket No.** 2007-0326-MSW-E	**PCW**
Respondent	City of El Paso		*Policy Revision 2 (September 2002)*
Case ID No.	32858		*PCW Revision January 9, 2007*
Reg. Ent. Reference No.	RN100215599		
Media [Statute]	Municipal Solid Waste		
Enf. Coordinator	Colin Barth		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 330.371(a)(2) [formerly 30 Tex. Admin. Code § 330.56(n)(1)(B)]

Violation Description Failed to prevent the concentration of methane gas from exceeding 5% by volume in monitoring points and probes at the facility's property boundary, as documented during investigations conducted on June 8, 2006 and January 23, 2007. Specifically, landfill gas (LFG) monitoring reports for gas monitoring probes GMP-2 and GMP-3 indicate that methane gas concentration has exceeded the regulatory limit of 5% since 2003. LFG for GMP-2 and GMP-3 was reported as high as 8.8% and 26.3% in 2003, 11.0% and 10.4% in 2004, 17.6% and 18% in 2005, and 11.7% and 15.9% in 2006.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Harm: Moderate	Minor
Actual		x	
Potential			

Percent 25%

x

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment have been exposed to significant amounts of pollutants as a result of this violation.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 8

1,460 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	x
annual	
single event	

Violation Base Penalty $20,000

Eight semiannual events are recommended from the date methane levels began to exceed the regulatory limit, March 1, 2003 to the screening date of February 28, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $1,192

Statutory Limit Test

Violation Final Penalty Total $22,000

This violation Final Assessed Penalty (adjusted for limits) $22,000

Economic Benefit Worksheet

Respondent City of El Paso
Case ID No. 32858
Reg. Ent. Reference No. RN100215599
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling	$5,000	1-Mar-2003	5-Dec-2007	4.8	$1,192	n/a	$1,192
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost for additional oversight and monitoring which might have reduced or alleviated the exceedance of methane levels, from the date in which methane gas levels began to exceed the regulatory level to the expected date of compliance.

Avoided Costs (ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs))							
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $5,000

TOTAL $1,192

Screening Date	28-Feb-2007	Docket No. 2007-0326-MSW-E	PCW
Respondent	City of El Paso		Policy Revision 2 (September 2002)
Case ID No.	32858		PCW Revision January 9, 2007
Reg. Ent. Reference No.	RN100215599		
Media [Statute]	Municipal Solid Waste		
Enf. Coordinator	Colin Barth		

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 330.371(g)(3) [formerly 30 Tex. Admin. Code § 330.56(n)(7)(C)]

Violation Description Failed to have a landfill gas management plan that includes a backup plan to be used if the main system breaks down or becomes ineffective, as documented during investigations conducted on June 8, 2006 and January 23, 2007. Specifically, the Gas Management Plan for the landfill did not include a backup plan.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
		x	

Percent 5%

Matrix Notes: 50% of the rule requirement was met.

Adjustment $9,500

$500

Violation Events

Number of Violation Events: 1

36 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $201

Statutory Limit Test

Violation Final Penalty Total $550

This violation Final Assessed Penalty (adjusted for limits) $550

Economic Benefit Worksheet

Respondent City of El Paso
Case ID No. 32858
Reg. Ent. Reference No. RN100215599
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal	$1,000	27-Oct-2003	5-Nov-2007	4.0	$201	n/a	$201
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to submit a backup plan to be included in the facility's methane gas management plan from the Landfill Gas Management Plan approval date to the estimated date of compliance.

Avoided Costs (ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs))							
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $1,000

TOTAL $201

Screening Date	28-Feb-2007	**Docket No.** 2007-0326-MSW-E	**PCW**
Respondent	City of El Paso		*Policy Revision 2 (September 2002)*
Case ID No.	32858		*PCW Revision January 9, 2007*
Reg. Ent. Reference No.	RN100215599		
Media [Statute]	Municipal Solid Waste		
Enf. Coordinator	Colin Barth		

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 330.143(b)(1)(B) [formerly 30 Tex. Admin. Code § 330.122]

Violation Description Failed to post yellow landfill buffer zone markers, as documented during investigations conducted on June 8, 2006 and January 23, 2007. Specifically, yellow buffer zone markers on the west side of the facility need to be moved to the east side of the access road to allow for protection of a 50 foot buffer zone. Landfill markers were properly placed on August 16, 2006.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment will or could be exposed to insignificant amounts of pollutants as a result of this violation.

Adjustment $9,500

$500

Violation Events

Number of Violation Events 1

69 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $5

Statutory Limit Test

Violation Final Penalty Total $550

This violation Final Assessed Penalty (adjusted for limits) $550

Economic Benefit Worksheet

Respondent City of El Paso
Case ID No. 32858
Reg. Ent. Reference No. RN100215599
Media Municipal Solid Waste
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)	$500	8-Jun-2006	16-Aug-2006	0.2	$5	n/a	$5
Notes for DELAYED costs	Estimated cost to provide site buffer markers on the east side of the landfill from the June 8, 2006 investigation (481844) to the date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance: $500

TOTAL: $5

Screening Date	28-Feb-2007	Docket No. 2007-0326-MSW-E	PCW
Respondent	City of El Paso		Policy Revision 2 (September 2002)
Case ID No.	32858		PCW Revision January 9, 2007
Reg. Ent. Reference No.	RN100215599		
Media [Statute]	Municipal Solid Waste		
Enf. Coordinator	Colin Barth		

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code §§ 205.6, 334.22(a), 334.128(a), and Tex. Water Code § 5.702

Violation Description Failed to pay outstanding fees for the TCEQ Financial Account No. 0005288U, 0030987A, 0030987U, 20000846, 20001267, and 20015245 for fiscal year 2007, as documented during a record review conducted on March 6, 2007.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: No penalty is calculated for this violation.

Adjustment $10,000

$0

Violation Events

Number of Violation Events ____ ____ Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $0

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $0

This violation Final Assessed Penalty (adjusted for limits) $0

Economic Benefit Worksheet

Respondent City of El Paso
Case ID No. 32858
Reg. Ent. Reference No. RN100215599
Media Municipal Solid Waste
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	N/A						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs	N/A						

Approx. Cost of Compliance $0

TOTAL $0

Compliance History

Customer/Respondent/Owner-Operator:	CN601410244	CITY OF EL PASO	Classification: AVERAGE	Rating: 3.51
Regulated Entity:	RN100215599	MCCOMBS MUNICIPAL LANDFILL	Classification: AVERAGE	Site Rating: 1.09

ID Number(s):			
	AIR OPERATING PERMITS	ACCOUNT NUMBER	EE2213K
	AIR OPERATING PERMITS	PERMIT	1749
	MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	729A
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EE2213K
	AIR NEW SOURCE PERMITS	AFS NUM	4814100098
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EE0117V
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	64363
	STORMWATER	PERMIT	TXR05L795

Location: 13600 MCCOMBS ST, EL PASO, TX, 79934 Rating Date: September 01 06 Repeat Violator: NO

TCEQ Region: REGION 06 - EL PASO

Date Compliance History Prepared: March 01, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 01, 2002 to March 01, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Colin Barth Phone: (512) 239-0086

Site Compliance History Components

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 of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 12/13/2002 (16046)
N/A
2 01/31/2003 (18301)
3 06/01/2004 (249911)
4 12/15/2004 (339213)
5 01/07/2005 (346373)
6 06/03/2005 (394656)
7 06/17/2005 (396641)
8 10/21/2005 (432151)
9 12/22/2005 (436194)
10 06/14/2006 (481844)
11 01/26/2007 (537677)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 01/10/2005 (346373)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter E 330.56(n)(3)(C)
Description: Failure to implement a remediation plan 60 days after methane gas levels have exceeded the regulatory limit of 5%.

Date: 12/22/2005 (436194)
Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter E 330.56(n)(1)(B)

Description: Failure to ensure that the concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary. Facility records indicate that the concentration of methane gas has exceeded the regulatory limit since March 2003.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 330, SubChapter E 330.56(n)(7)(C)

Description: Failure to have a backup plan to be used if the methane gas management system breaks down or becomes ineffective. At the time of investigation, no backup plan was provided.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 330, SubChapter F 330.122

Description: Failure to ensure that all landfill markers are installed and maintained in compliance with the site operating plan. At the time of investigation, yellow buffer markers on the west side of the facility need to be relocated to the east side of the access road to allow for protection of a 50 foot buffer zone.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
CITY OF EL PASO	§	
RN100215599	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-0326-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of El Paso ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 5 and 7. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operated an inactive Type I municipal solid waste landfill at 13600 McCombs Street in El Paso, El Paso County, Texas (the "Facility").

2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.

3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.

4. The City received notice of the violations alleged in Section II ("Allegations") on or about January 31, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Twenty Three Thousand One Hundred Dollars ($23,100) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Four Thousand Six Hundred Twenty Dollars ($4,620) is deferred contingent

upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty. Eighteen Thousand Four Hundred Eighty Dollars ($18,480) shall be conditionally offset by the City's completion of a Supplemental Environmental Project.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:

   a. On August 16, 2006, landfill markers were properly placed;

   b. On October 10, 2006, the City submitted a Gas Remediation Plan to the TCEQ; and

   c. On November 16, 2006, the City installed five passive vents in the area of concern and on January 18, 2007, the City installed solar powered ventilators on the five passive vents.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and former operator of the Facility, the City is alleged to have:

1. Failed to prevent the concentration of methane gas from exceeding 5% by volume in monitoring points and probes at the Facility's property boundary, in violation of 30 TEX. ADMIN. CODE § 330.371(a)(2) [formerly 30 TEX. ADMIN. CODE § 330.56(n)(1)(B)], as documented during investigations conducted on June 8, 2006 and January 23, 2007. Specifically, landfill gas (LFG) monitoring reports for gas monitoring probes GMP-2 and GMP-3 indicate that methane gas concentration has exceeded the regulatory limit of 5% since 2003. LFG for GMP-2 and GMP-3 was reported as high as 8.8% and 26.3% in 2003, 11.0% and 10.4% in 2004, 17.6% and 18% in 2005, and 11.7% and 15.9% in 2006.

2. Failed to have a landfill gas management plan that includes a backup plan to be used if the main system breaks down or becomes ineffective, in violation of 30 TEX. ADMIN. CODE § 330.371(g)(3) [formerly 30 TEX. ADMIN. CODE § 330.56(n)(7)(C)], as documented during investigations conducted on June 8, 2006 and January 23, 2007. Specifically, the Landfill Gas Management Plan approved October 27, 2003 did not include a backup plan.

3. Failed to post yellow landfill buffer zone markers, in violation of 30 TEX. ADMIN. CODE § 330.143(b)(1)(B) [formerly 30 TEX. ADMIN. CODE § 330.122], as documented during investigations conducted June 8, 2006 and January 23, 2007. Specifically, yellow buffer zone markers on the west side of the facility need to be moved to the east side of the access road to allow for protection of a 50 foot buffer zone. Landfill markers were properly placed on August 16, 2006.

4. Failed to pay outstanding fees for the TCEQ Financial Account No. 0005288U, 0030987A, 0030987U, 20000846, 20001267, and 20015245 for fiscal year 2007, in violation of 30 TEX. ADMIN. CODE §§ 205.6, 334.22(a), 334.128(a), and TEXAS WATER CODE § 5.702, as documented during a record review conducted on March 6, 2007.

III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of El Paso, Docket No. 2007-0326-MSW-E" 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

2. The City shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Eighteen Thousand Four Hundred Eighty Dollars ($18,480) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. It is further ordered that the City shall undertake the following technical requirements:

a. Within 15 days after the effective date of this Agreed Order, develop and implement a methane gas management backup plan to address any exceedences of methane regulatory levels. Submit copies of the backup plan to the addresses listed in Ordering Provsion 3.d. and submit the backup plan to:

Municipal Solid Waste Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

b. Within 30 days after the effective date of this Agreed Order, certify that methane gas concentration levels are below regulatory levels, in accordance with 30 TEX. ADMIN. CODE § 330.371(a)(2);

c. Within 30 days after the effective date of this Agreed Order, submit payment for outstanding fees, including any associated penalties and interest and with the notation, "City of El Paso, Account No. 0005288U, 0030987A, 0030987U, 20000846, 20001267, and 20015245 ", to the address listed in Ordering Provision 1; and

d. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a through 3.c.

The certification shall be notarized by a State of Texas Notary Public and 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 certification shall be submitted to:

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

with a copy to:

Waste Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

4. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

5. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 10/18/07
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

_____ 7/24/07
Signature Date

Joyce A. Wilson City Manager
Name (Printed or typed) Title
Authorized Representative of
City of El Paso

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

APPROVED AS TO FORM:

_____
Josette Flores
Assistant City Attorney

Attachment A
Docket Number: 2007-0326-MSW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**City of El Paso**
Penalty Amount:	**Eighteen Thousand Four Hundred Eighty Dollars ($18,480)**
SEP Amount:	**Eighteen Thousand Four Hundred Eighty Dollars ($18,480)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Keep Texas Beautiful-Cleanup of Unauthorized Trash Dumps**
Location of SEP:	**El Paso County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Amount to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, Keep Texas Beautiful shall use the funds for the Cleanup of Unauthorized Trash Dumps project in El Paso County. The cleanup project shall promote the cleanup of unauthorized trash dumps by supplying project coordination, labor, supplies, and materials for cleanup events and by providing assistance with disposal fees for proper disposal of wastes collected at the events.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping to rid communities of the dangers and health threats associated with non-regulated dumping which contaminates air, land, and water, and harbors animals and insects that may carry disease.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Keep Texas Beautiful
Attn: Katie Sternberg, Programs Director
P.O. Box 2251
Austin, Texas 78768

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

In the event of incomplete performance, the check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.