EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0764-MSW-E **TCEQ ID:** RN105176218 **CASE NO.:** 33499

RESPONDENT NAME: City of Edcouch

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: City of Edcouch Equipment Shop, at the northeast corner of the intersection of Avenida Del Sur Road and Farm-to-Market Road 1015, Edcouch, Hidalgo County

TYPE OF OPERATION: Equipment shop

SMALL BUSINESS: ____ Yes __X__ No

OTHER SIGNIFICANT MATTERS: A complaint was received on March 5, 2007 alleging the unauthorized disposal of municipal solid waste at the City of Edcouch Equipment Shop. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on September 24, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Clinton Sims, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-6933; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468
Respondent: The Honorable Ramiro Silva, Mayor, City of Edcouch, P.O. Box 100, Edcouch, Texas 78538
Mr. Ernesto Ayala, Jr., City Manager, City of Edcouch, P.O. Box 100, Edcouch, Texas 78538
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: _X_ Complaint __ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** March 5, 2007 **Date of Investigation Relating to this Case:** March 7 through March 21, 2007 and April 2, 2007 **Date of NOV/NOE Relating to this Case:** April 5, 2007 (NOE) **Background Facts:** This was a complaint investigation. One violation was documented. **WASTE** Failed to prevent the unauthorized transportation and disposal of municipal solid waste. Specifically, the City of Edcouch transported and buried a total of 278 whole scrap tires and 10 cubic yards of municipal solid waste including scrap wood, pvc piping, a refrigerator, assorted scrap metal, brush, plastic bins, and a metal container at the City of Edcouch Equipment Shop [TEX. ADMIN. CODE §§ 330.15(c) and 330.103(b)].	**Total Assessed:** $750 **Total Deferred:** $150 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $240 (remaining $360 due in 2 monthly payments of $180 each) **Site Compliance History Classification** __ **High** __ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the City removed and properly disposed of the waste at an authorized facility by April 2, 2007.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision April 26, 2007*

TCEQ

DATES					
Assigned	30-Apr-2007				
PCW	11-May-2007	Screening	15-May-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	City of Edcouch		
Reg. Ent. Ref. No.	RN105176218		
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	33499	No. of Violations	1
Docket No.	2007-0764-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Clinton Sims
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 0% Enhancement — *Subtotals 2, 3, & 7* $0

Notes: The Respondent has not received any previous NOVs or Orders at this site in 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 — 25% Reduction — *Subtotal 5* $250

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

Notes: The Respondent achieved compliance on April 2, 2007.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$5
Approx. Cost of Compliance	$1,520

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $750

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 $750

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $750

DEFERRAL — 20% Reduction — *Adjustment* -$150

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 $600

Screening Date 15-May-2007 **Docket No.** 2007-0764-MSW-E **PCW**

Respondent City of Edcouch *Policy Revision 2 (September 2002)*

Case ID No. 33499 *PCW Revision April 26, 2007*

Reg. Ent. Reference No. RN105176218

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

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*)	0	0%
	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) 0%

>> **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 not received any previous NOVs or Orders at this site in the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 15-May-2007 **Docket No.** 2007-0764-MSW-E **PCW**

Respondent City of Edcouch *Policy Revision 2 (September 2002)*

Case ID No. 33499 *PCW Revision April 26, 2007*

Reg. Ent. Reference No. RN105176218

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 330.15(c) and 330.103(b)

Violation Description Failed to prevent the unauthorized transportation and disposal of municipal solid waste, as documented during investigations conducted on March 7, 2007 through March 21, 2007 and April 2, 2007. Specifically, the Respondent transported and buried a total of 278 whole scrap tires and 10 cubic yards of municipal solid waste including scrap wood, pvc piping, a refrigerator, assorted scrap metal, brush, plastic bins, and a metal container at the City of Edcouch Equipment Shop.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

OR

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 69 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended based from the March 7, 2007 investigation date to the April 2, 2007 date of compliance.

Economic Benefit (EB) for this violation

Estimated EB Amount $5

Statutory Limit Test

Violation Final Penalty Total $750

This violation Final Assessed Penalty (adjusted for limits) $750

Economic Benefit Worksheet

Respondent City of Edcouch
Case ID No. 33499
Reg. Ent. Reference No. RN105176218
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				0.0	$0	n/a	$0
Remediation/Disposal	$1,520	7-Mar-2007	2-Apr-2007	0.1	$5	n/a	$5
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to remove the municipal solid waste and dispose of it at an approved municipal solid waste disposal site (10 cubic yards at $13 per cubic yard) plus the estimated cost to remove and dispose of 278 scrap tires at an authorized facility ($5 per tire). The Date Required is the investigation date and the Final Date is the date the Respondent came into 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: $1,520

TOTAL: $5

Compliance History

Customer/Respondent/Owner-Operator:	CN600626683	City of Edcouch	Classification: AVERAGE	Rating: 2.11
Regulated Entity:	RN105176218	CITY OF EDCOUCH EQUIPMENT SHOP	Classification:	Site Rating:
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED		ID NUMBER	455150156
Location:	Northeast corner of the intersection of Avenida Del Sur Road and Farm-to-Market Road 1015			
TCEQ Region:	REGION 15 - HARLINGEN			
Date Compliance History Prepared:	May 25, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 25, 2002 to May 25, 2007			

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

Name: Clinton Sims Phone: (512) 239-6933

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 04/26/2007 (556019)

N/A

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

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 EDCOUCH	§	
RN105176218	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-0764-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 City of Edcouch ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 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 operates an equipment shop at the northeast corner of the intersection of Avenida Del Sur Road and Farm-to-Market Road 1015 in Edcouch, Hidalgo 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 April 10, 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 Seven Hundred Fifty Dollars ($750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Two Hundred Forty Dollars ($240) of the administrative penalty and One Hundred Fifty Dollars ($150) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all

requirements of this Agreed Order, including the payment schedule, the Executive Director may require the City to pay all or part of the deferred penalty.

The remaining amount of Three Hundred Sixty Dollars ($360) of the administrative penalty shall be payable in 2 monthly payments of One Hundred Eighty Dollars ($180) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the City fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the City to meet the payment schedule of this Agreed Order constitutes the failure by the City to timely and satisfactorily comply with all the terms of this Agreed Order.

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 removed and properly disposed of the waste at an authorized facility by April 2, 2007.

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 operator of the Facility, the City is alleged to have failed to prevent the unauthorized transportation and disposal of municipal solid waste, in violation of TEX. ADMIN. CODE §§ 330.15(c) and 330.103(b), as documented during investigations conducted on March 7, 2007 through March 21, 2007 and April 2, 2007. Specifically, the City of Edcouch transported and buried a total of 278 whole scrap tires and 10 cubic yards of municipal solid waste including scrap wood, pvc piping, a refrigerator, assorted scrap metal, brush, plastic bins, and a metal container at the City of Edcouch Equipment Shop.

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 Edcouch, Docket No. 2007-0764-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 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.

3. 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 become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. 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

5. 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.

6. 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.

7. 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

_____ 10/3/07
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 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- 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;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

_____ 7/19/07
Signature Date

Ernesto Ayala, Jr City Manager
Name (Printed or typed) Title
Authorized Representative of
City of Edcouch

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.

[illegible]
[illegible]
[illegible]

[illegible]

[illegible]

[illegible]

_____
[illegible]

_____ _____
[illegible] [illegible]

I, the undersigned, as a real and [illegible] the attached Agreed Order. I am [illegible] to agree to the issuance of [illegible] Order on behalf of the [illegible] I have my signature, and I [illegible] to the terms and conditions specified herein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is relatively relying on such representation.

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

- A negative impact on compliance history
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for collection, where applicable, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- Collection proceedings as authorized by law.

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

_____ _____
Signature Date

_____ _____
Name (Printed or typed) Title
Authorized Representative of
[illegible]

[illegible] must be original. If an Agreed Order with penalty payment is the Executive Director's [illegible] Section [illegible], [illegible] of the [illegible].