EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1660-MSW-E **TCEQ ID:** RN102040813 **CASE NO.:** 30732

RESPONDENT NAME: Milano Independent School District

ORDER TYPE:

X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	__AIR	__INDUSTRIAL AND HAZARDOUS WASTE	X MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	__PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	__WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: Milano Independent School District, 500 North 5th Street, Milano, Milam County

TYPE OF OPERATION: School

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 March 19, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Dana Shuler, Enforcement Division, Enforcement Section IV, MC 128, (512) 239-2505; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
TCEQ Field Investigator: Mr. Russ Alexander, Waco Regional Office, MC R-09, (254) 751-0335
Respondent: Ms. Lindy Robinson, Superintendent, Milano Independent School District, 500 North 5th Street, Milano, Texas 76556
Respondent's Attorney: Not represented by counsel on this enforcement matter

Attachment: Site Compliance History

RESPONDENT'S NAME: Milano Independent School District
DOCKET NO.: 2006-1660-MSW-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** May 30, 2006 **Date of NOE Relating to this Case:** May 30, 2006 (NOE) **Background Facts:** This was a routine investigation. One violation was documented. **WASTE** Failed to properly dispose of municipal solid waste at an authorized facility. Specifically, the investigation documented the unauthorized dumping of approximately 300 cubic yards of municipal solid waste including wooden construction debris, concrete with rebar, old school chairs, a couch, an old shop vac, and other waste in a ravine behind Milano Middle School [30 TEX. ADMIN. CODE § 330.15(c) [formerly 30 TEX. ADMIN. CODE § 330.4(a)]].	**Total Assessed:** $1,050 **Total Deferred:** $210 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $840 **Site Compliance History Classification:** __ High _X_ Avg. __ Poor **Person Compliance History Classification:** __ High _X_ Avg. __ Poor **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Immediately upon the effective date of this Agreed Order, cease disposing any additional waste at the Site; b. Within 120 days after the effective date of this Agreed Order, remove all waste materials buried on-site and dispose of the wastes at a permitted municipal solid waste disposal facility; and c. Within 135 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.

Attachment: Site Compliance History

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision May 19, 2005*

DATES					
Assigned	31-Jul-2006				
PCW	21-Nov-2006	Screening	10-Aug-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Milano Independent School District		
Reg. Ent. Ref. No.	RN102040813		
Facility/Site Region	9-Waco	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	30732	No. of Violations	1
Docket No.	2006-1660-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	A. Sunday Udoetok
Multi-Media		EC's Team	Enforcement Team 8
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 5% Enhancement *Subtotals 2, 3, & 7* $50

Notes: An enhancement is given for one Notice of Violation for same or similar violations.

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 a small x)*

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

Economic Benefit 0% Enhancement* *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$258
Approx. Cost of Compliance	$5,400

SUM OF SUBTOTALS 1-7 Final Subtotal $1,050

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 $1,050

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $1,050

DEFERRAL 20% Reduction Adjustment -$210

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 $840

Screening Date 10-Aug-2006 **Docket No.** 2006-1660-MSW-E **PCW**
Respondent Milano Independent School District *Policy Revision 2 (September 2002)*
Case ID No. 30732 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102040813
Media [Statute] Municipal Solid Waste
Enf. Coordinator A. Sunday Udoetok

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)*	1	5%
	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*	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) **5%**

>> 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 An enhancement is given for one Notice of Violation for same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **5%**

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	10-Aug-2006
Docket No.	2006-1660-MSW-E
Respondent	Milano Independent School District
Case ID No.	30732
Reg. Ent. Reference No.	RN102040813
Media [Statute]	Municipal Solid Waste
Enf. Coordinator	A. Sunday Udoetok
Violation Number	1
Primary Rule Cite(s)	30 Tex. Admin. Code § 330.15(c) [formerly 30 Tex. Admin. Code § 330.4(a)]
Secondary Rule Cite(s)	
Violation Description	Failure to properly dispose of municipal solid waste at an authorized facility, as documented during an investigation conducted on May 30, 2006. Specifically, the investigation documented the unauthorized dumping of approximately 300 cubic yards of municipal solid waste including wooden construction debris, concrete with rebar, old school chairs, a couch, an old shop vac, and other waste in a ravine behind Milano Middle School.

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

Matrix Notes: Human health or the environment has been exposed to insignificant amount of pollutants which do not exceed levels that are protective to human health or the environment.

Adjustment -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events: 1

mark only one use a small x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended based on the May 30, 2006 investigation to the August 10, 2006 screening date.

Economic Benefit (EB) for this violation | **Statutory Limit Test**

Estimated EB Amount $258

Violation Final Penalty Total $1,050

This violation Final Assessed Penalty (adjusted for limits) $1,050

Economic Benefit Worksheet

Respondent Milano Independent School District
Case ID No. 30732
Reg. Ent. Reference No. RN102040813
Media [Statute] Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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	$5,400	30-May-2006	14-May-2007	1.0	$258	n/a	$258
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to remove the unauthorized municipal solid waste and dispose it at an approved landfill ($13 per cubic yard). Date Required is the investigation date and Final Date is the estimated date of compliance. Additionally, the cost includes $1,500 for the use of equipment and personnel to load and haul the waste to a permitted municipal solid waste landfill.

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 $5,400

TOTAL $258

Compliance History

Customer/Respondent/Owner-Operator:	CN601108863	Milano ISD	Classification: AVERAGE	Rating: 1.00
Regulated Entity:	RN102040813	MILANO ISD	Classification: AVERAGE	Site Rating: 1.00
ID Number(s):				
Location:	500 N 5TH ST, MILANO, TX, 76556		Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	October 03, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 03, 2001 to October 03, 2006			

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

Name: A. Sunday Udoetok Phone: (512) 239 2292

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership 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 judgments, 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.)

N/A
1 01/25/2006 (453103)
2 07/24/2006 (480560)

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

Date: 12/15/2005 (440153)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter A 330.4(a)
Description: An investigation conducted on December 6, 2005 documented unauthorized dumping of municipal solid waste in a ravine behind Milano Middle School.

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**
MILANO INDEPENDENT SCHOOL	§	
DISTRICT	§	
RN102040813	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-1660-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 Milano Independent School District ("Milano ISD") under the authority of the TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Milano ISD appear before the Commission and together stipulate that:

1. Milano ISD owns the Milano Middle School and surrounding property located at 500 North 5th Street in Milano, Milam County, Texas (the "Site").

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

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

4. Milano ISD received notice of the violations alleged in Section II ("Allegations") on or about June 5, 2006.

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

6. An administrative penalty in the amount of One Thousand Fifty Dollars ($1,050) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Milano ISD has paid Eight Hundred Forty Dollars ($840) of the administrative penalty and Two Hundred Ten Dollars ($210) is deferred contingent upon Milano ISD'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 Milano ISD fails to timely and satisfactorily comply with all

requirements of this Agreed Order, the Executive Director may require Milano ISD to pay all or part of the deferred penalty.

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 Milano ISD have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. 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 Milano ISD has not complied with one or more of the terms or conditions in this Agreed Order.

10. 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.

11. 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 Site, Milano ISD is alleged to have failed to properly dispose of municipal solid waste at an authorized facility, in violation of 30 TEX. ADMIN. CODE § 330.15(c) [formerly 30 TEX. ADMIN. CODE § 330.4(a)], as documented during an investigation conducted on May 30, 2006. Specifically, the investigation documented the unauthorized dumping of approximately 300 cubic yards of municipal solid waste including wooden construction debris, concrete with rebar, old school chairs, a couch, an old shop vac, and other waste in a ravine behind Milano Middle School.

III. DENIALS

Milano ISD generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Milano ISD pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Milano ISD'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: Milano Independent School District, Docket No. 2006-1660-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. It is further ordered that Milano ISD shall undertake the following technical requirements:

a. Immediately upon the effective date of this Agreed Order, cease disposing any additional waste at the Site;

b. Within 120 days after the effective date of this Agreed Order, remove all waste materials buried on-site and dispose of the wastes at a permitted municipal solid waste disposal facility; and

c. Within 135 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. 2.a. and 2.b.

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
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue., Suite 2500
Waco, Texas 76710-7826

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

4. If Milano ISD 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, Milano ISD's failure to comply is not a violation of this Agreed Order. Milano ISD shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Milano ISD shall notify the Executive Director within seven days after Milano ISD becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. 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 Milano ISD shall be made in writing to the Executive Director. Extensions are not effective until Milano ISD receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Milano ISD 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.

7. 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.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Milano ISD, or three days after the date on which the Commission mails notice of the Order to Milano ISD, 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

_____ _____
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.

Lindy Robinson 12-19-2006
Signature Date

Lindy Robinson Superintendent
Name (Printed or typed) Title
Authorized Representative of
Milano Independent School District

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.