EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NUMBER: 2006-0508-MLM-E TCEQ ID NO: RN104549118 ENF ID: 29274

RESPONDENT NAME: JOSE CISNEROS AND EDGAR CISNEROS

ORDER TYPE:

__1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL __ENDANGERMENT ORDER
__SHUTDOWN ORDER	X FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

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

SITE WHERE VIOLATION(S) OCCURRED: Seven miles west of Alice, on County Road 147, 1 1/2 miles south of Highway 44, in Jim Wells County

TYPE OF OPERATION: Non-permitted municipal solid waste site

SMALL BUSINESS: X Yes ___ No

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on February 26, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
TCEQ Enforcement Coordinator: Mr. Marlin Bullard, Enforcement Division, MC R-9, (254) 751-0335
TCEQ Regional Contact: Mr. Brad Genzer, Corpus Christi Regional Office, MC R-14, (361) 825-3106
Respondent: Mr. Jose Cisneros and Mr. Edgar Cisneros, 275 County Road 154, Alice, Texas 78332
Respondent's Attorney: Not represented by counsel.

Attachment: Site Compliance History

RESPONDENT'S NAME: JOSE CISNEROS AND EDGAR CISNEROS
DOCKET NO.: 2006-0508-MLM-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date(s) of Investigation(s) Relating to this Case:** February 18, 2005 and March 31, 2006 **Date(s) of NOV(s)/NOE(s) Relating to this Case:** March 17, 2005 (NOV) and April 20, 2006 (NOE) **Background Facts:** The EDPRP was filed on September 27, 2006. The Respondents received notice of the EDPRP on September 29, 2006, as evidenced by the signatures on the "green cards". The Respondents failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference. The Respondents in this case do not owe any other penalties according to the Administrative Penalty Database Report. **MLM:** (1) Failed to comply with the prohibition on outdoor burning [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)]. (2) Failed to prevent the disposal of municipal solid waste at an unauthorized site [30 TEX. ADMIN. CODE § 330.15(c)].	**Total Assessed:** $2,100 **Total Deferred:** $0 __Expedited Settlement __Financial Inability to Pay **Total Due to General Revenue:** $2,100 This is a Default Order. The Respondents have not actually paid any of the assessed penalty but will be required to do so under the terms of this Order. **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 Respondents shall undertake the following technical requirements: (1) Immediately: a. Cease the receipt and storage of additional waste material at the Site; and b. Cease all unauthorized burning of wastes at the Site. (2) Within 30 days, remove all waste material from the Site and dispose of the waste at an authorized facility. (3) Within 45 days, submit written certification to demonstrate compliance.

Penalty Calculation Worksheet (PCW)

TCEQ

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

DATES					
Assigned	24-Apr-2006				
PCW	15-Sep-2006	Screening	02-May-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Jose Cisneros and Edgar Cisneros		
Reg. Ent. Ref. No.	RN104549118		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	29274	No. of Violations	2
Docket No.	2006-0508-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Marlin Bullard
Multi-Media	Air Quality	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* $2,000

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* $100

Notes: Enhancement for one NOV with the same or similar violations at this site within the past five years.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The Respondents do 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 Respondents are not yet in compliance.

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

**Capped at the Total EB $ Amount*

Total EB Amounts	$364
Approx. Cost of Compliance	$746

SUM OF SUBTOTALS 1-7 Final Subtotal $2,100

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 $2,100

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $2,100

DEFERRAL 0% Reduction Adjustment $0

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

Notes: No deferral because this is a non-expedited case.

PAYABLE PENALTY $2,100

Screening Date 02-May-2006 **Docket No.** 2006-0508-MLM-E **PCW**

Respondent Jose Cisneros and Edgar Cisneros *Policy Revision 2 (September 2002)*

Case ID No. 29274 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN104549118

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

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 Enhancement for one NOV with the same or similar violations at this site within the past five years.

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

PCW

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

Screening Date 02-May-2006 **Docket No.** 2006-0508-MLM-E
Respondent Jose Cisneros and Edgar Cisneros
Case ID No. 29274
Reg. Ent. Reference No. RN104549118
Media [Statute] Municipal Solid Waste
Enf. Coordinator Marlin Bullard

Violation Number 1
Primary Rule Cite(s) 30 TAC § 330.15(c)
Secondary Rule Cite(s)
Violation Description Failure to prevent the disposal of municipal solid waste at an unauthorized site, as documented during an investigation conducted on March 31, 2006. Specifically, during the investigation, it was documented that the respondent disposed of approximately 10 cubic yards of municipal solid waste including, construction and demolition debris, brush, appliance debris and metal debris at the unauthorized disposal site.

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 amounts of pollutants which do not exceed levels that are protective of human health or enviromental receptors.

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 from the March 31, 2006 investigation date to the May 3, 2006 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $17

Statutory Limit Test

Violation Final Penalty Total $1,050

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

Economic Benefit Worksheet

Respondent Jose Cisneros and Edgar Cisneros
Case ID No. 29274
Reg. Ent. Reference No. RN104549118
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	$430	31-Mar-2006	11-Jan-2007	0.8	$17	n/a	$17
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to dispose of approximately 10 cubic yards of waste at a permitted municipal solid waste landfill at $13 per cubic yard from the investigation date March 31, 2006 until the expected date of compliance January 11, 2007. Additionally, the cost includes $300 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 $430

TOTAL $17

PCW

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

Screening Date 02-May-2006 **Docket No.** 2006-0508-MLM-E
Respondent Jose Cisneros and Edgar Cisneros
Case ID No. 29274
Reg. Ent. Reference No. RN104549118
Media [Statute] Municipal Solid Waste
Enf. Coordinator Marlin Bullard

Violation Number 2
Primary Rule Cite(s) 30 TAC § 111.201
Secondary Rule Cite(s) Tex. Health & Safety Code § 382.085(b)
Violation Description Failure to comply with the prohibition on outdoor burning, as documented during an investigation conducted on February 18, 2005. Specifically, during the investigation, it was documented that the respondent conducted an outdoor burn with the intent to dispose of municipal solid waste including tires, construction and demolition debris, scrap metal and appliances.

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 amounts of pollutants which do not exceed levels that are protective of human health or enviromental receptors.

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	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended.

Economic Benefit (EB) for this violation — Statutory Limit Test

Estimated EB Amount $348 **Violation Final Penalty Total** $1,050

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

Economic Benefit Worksheet

Respondent Jose Cisneros and Edgar Cisneros
Case ID No. 29274
Reg. Ent. Reference No. RN104549118
Media [Statute] Municipal Solid Waste
Violation No. 2

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				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs							
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]	$316	18-Feb-2005	11-Jan-2007	2.0	$32	$316	$348
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs	Estimated cost to dispose of approximately 2 cubic yards of waste at a permitted municipal solid waste landfill at $13 per cubic yard from the investigation date February 18, 2005 until the expected date of compliance January 11, 2007. Additionally, the cost includes $300 for the use of equipment and personnel to load and haul the waste to a permitted municipal solid waste landfill.						

Approx. Cost of Compliance: $316

TOTAL: $348

Compliance History

Customer/Respondent/Owner-Operator:	CN603032947	CISNEROS, EDGAR	Classification: AVERAGE	Rating: 3.00
Regulated Entity:	RN104549118	CISNEROS LOT	Classification: AVERAGE	Site Rating: 3.00
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER		UNA 45514021
Location:	1 1/2 MILES SOUTH ON COUNTY ROAD 147 OFF OF HIGHWAY 44 APPROX 7 MILES WEST OF ALICE		Rating Date: 9/1/2005 Repeat Violator: NO	
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	May 11, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 01, 2001 to May 01, 2006			

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

Name: N/A Phone: N/A

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 03/22/2005 (373182)

2 04/20/2006 (461291)

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

Date: 03/17/2005 (373182)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.9

Description: Failure to obtain commission authorization prior to an activity of storage, processing, or disposal of municipal solid waste.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201

Description: Failure to comply with the prohibition on outdoor burning.

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

Compliance History

Customer/Respondent/Owner-Operator:	CN602794554	CISNEROS, JOSE	Classification: AVERAGE	Rating: 3.00
Regulated Entity:	RN104549118	CISNEROS LOT	Classification: AVERAGE	Site Rating: 3.00
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER		UNA 45514021
Location:	1 1/2 MILES SOUTH ON COUNTY ROAD 147 OFF OF HIGHWAY 44 APPROX 7 MILES WEST OF ALICE		Rating Date: September 01 05	Repeat Violator: NO
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	April 24, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 24, 2001 to April 24, 2006			

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

Name: N/A Phone: N/A

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 03/22/2005 (373182)

2 04/20/2006 (461291)

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

Date: 03/17/2005 (373182)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.4(a)

Description: Failure to obtain commission authorization prior to an activity of storage, processing, or disposal of municipal solid waste.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201

Description: Failure to comply with the prohibition on outdoor burning.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING JOSE CISNEROS AND EDGAR CISNEROS; RN104549118	§ § § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER
DOCKET NO. 2006-0508-MLM-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE § 7.054 and ch. 7, and TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondents made the subject of this Order are Jose Cisneros and Edgar Cisneros ("Respondents").

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

FINDINGS OF FACT

1. Respondents own and operate a non-permitted municipal solid waste site located seven miles West of Alice, Texas, on County Road 147, 1 ½ miles south of Highway 44, in Jim Wells County, Texas (the "Site").

2. The Site involves the management and disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. During an investigation conducted on February 18, 2005, a TCEQ Corpus Christi Regional Office investigator documented that Respondents failed to comply with the prohibition on outdoor burning. Specifically, Respondents conducted an outdoor burn at the Site with the intent to dispose of municipal solid waste, including tires, construction and demolition debris, scrap metal, and appliances.

4. During an investigation conducted on March 31, 2006, a TCEQ Corpus Christi Regional Office investigator documented that Respondents failed to prevent the disposal of municipal solid waste at an unauthorized site. Specifically, Respondents disposed of at the Site

approximately 10 cubic yards of municipal solid waste, including construction and demolition debris, brush, appliance debris, and metal debris.

5. Respondents received notice of the violation alleged in paragraph three on or about March 22, 2005. Respondents received notice of the violation alleged in paragraph four on or about April 25, 2006.

6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jose Cisneros and Edgar Cisneros" (the "EDPRP") in the TCEQ Chief Clerk's office on September 27, 2006.

7. By letter dated September 27, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served both Respondents with notice of the EDPRP. According to the return receipt "green cards," both Respondents received notice of the EDPRP on September 29, 2006, as evidenced by the signature on each card.

8. More than 20 days have elapsed since Respondents received notice of the EDPRP, provided by the Executive Director. Respondents failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3, Respondents failed to comply with the prohibition on outdoor burning, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b).

3. As evidenced by Finding of Fact No. 4, Respondents failed to prevent the disposal of municipal solid waste at an unauthorized site, in violation of 30 TEX. ADMIN. CODE § 330.15(c).

4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Respondents with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

5. As evidenced by Finding of Fact No. 8, Respondents failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

7. An administrative penalty in the amount of two thousand one hundred dollars ($2,100.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondents are assessed an administrative penalty in the amount of two thousand one hundred dollars ($2,100.00) for violations of the Texas Water Code, the Texas Health & Safety Code, and the rules of the TCEQ. The payment of this administrative penalty and Respondents' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Jose Cisneros and Edgar Cisneros; Docket No. 2006-0508-MLM-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. Respondents shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Order, Respondents shall:

      i. Cease the receipt and storage of additional waste material at the Site; and

      ii. Cease all unauthorized burning of wastes at the Site.

   b. Within 30 days after the effective date of this Order, Respondents shall remove all waste material from the Site, and dispose of the waste at an authorized facility.

   c. Within 45 days after the effective date of this Order, Respondents shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with ordering provision Nos. 2.a.i., a.ii., and 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."

      Respondents shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a.i., a.ii., and b. 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:

      Brad Genzer, Waste Section Manager
      Texas Commission on Environmental Quality
      Corpus Christi Regional Office
      NRC Building, Ste. 1200

6300 Ocean Drive, Unit 5839
Corpus Christi, Texas 78412-5839

3. All relief not expressly granted in this Order is denied.

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

5. If Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become 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 Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

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

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

9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

For the Commission

AFFIDAVIT OF LENA ROBERTS

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Lena Roberts. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jose Cisneros and Edgar Cisneros" (the "EDPRP") was filed with the Office of the Chief Clerk on September 27, 2006.

The EDPRP was mailed to each Respondent at his last known address on September 27, 2006, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green cards," both Respondents received notice of the EDPRP on September 29, 2006, as evidenced by the signature on each card.

More than 20 days have elapsed since Respondents each received notice of the EDPRP. Respondents failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."

Lena Roberts, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Lena Roberts, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 3 day of January A.D., 2007.

JACQUELINE FRANCES DUCKWORTH
Notary Public, State of Texas
My Commission Expires
MARCH 07, 2007

Notary Signature

Notary without Bond