# EXECUTIVE SUMMARY - ENFORCEMENT MATTER



**DOCKET NO.:** 2007-0277-MLM-E **TCEQ ID:** RN105120737 **CASE NO.:** 32740

**RESPONDENT NAME:** John Benoit

| 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:** | | |
| _X_AIR | _X_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:** Vacant property, located on Big Hill Road south of Highway 73, Beaumont, Jefferson County

**TYPE OF OPERATION:** Unauthorized disposal site

**SMALL BUSINESS:** ___ **Yes** _X_ **No**

**OTHER SIGNIFICANT MATTERS:** A complaint was received on November 28, 2006, alleging illegal dumping of municipal solid waste on land owned by Mr. Benoit. 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 June 11, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney/SEP Coordinator:** None
**TCEQ Enforcement Coordinator:** Mr. Marlin Bullard, Enforcement Division, Enforcement Team 7, MC R-09, (254) 761-3038; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468
**Respondent:** Mr. John Benoit, 7941 Tom Drive, Port Arthur, Texas 77642
**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:**<br>X Complaint<br>__ Routine<br>__ Enforcement Follow-up<br>__ Records Review<br><br>**Date(s) of Complaints Relating to this Case:** November 28, 2006<br><br>**Date of Investigation Relating to this Case:** December 7, 2006<br><br>**Date of NOE Relating to this Case:** February 2, 2007 (NOE)<br><br>**Background Facts:** This was a complaint investigation. Two violations were documented.<br><br>**WASTE**<br><br>1) Failed to prevent the disposal of municipal solid waste at an unauthorized site. Specifically, the Respondent allowed approximately 3,820 cubic yards of municipal solid waste, including sheet metal, concrete, and other construction materials, to be disposed of at the unauthorized site [30 TEX. ADMIN. CODE § 330.15(c)].<br><br>**AIR**<br><br>2) Failed to comply with the general prohibition on outdoor burning. Specifically, during the investigation, the Respondent was observed burning a pile of construction debris and several other piles of previously burned debris were observed at the Site. Approximately 1,910 cubic yards of construction debris have been disposed by burning [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)]. | **Total Assessed:** $12,750<br><br>**Total Deferred:** $2,550<br>X Expedited Settlement<br><br>__Financial Inability to Pay<br><br>**SEP Conditional Offset:** $0<br><br>**Total Paid to General Revenue:** $10,200<br><br>**Site Compliance History Classification**<br>**__ High __ Average __ Poor**<br><br>**Person Compliance History Classification**<br>**__ High __ Average __ Poor**<br><br>**Major Source:** __ Yes _X_ No<br><br>**Applicable Penalty Policy:** September 2002 | **Ordering Provisions:**<br><br>The Order will require the Respondent to:<br><br>a. Immediately upon the effective date of this Agreed Order, cease all unauthorized burning of waste materials;<br><br>b. Immediately upon the effective date of this Agreed Order, cease accepting any additional waste at the Site;<br><br>c. Within 30 days after the effective date of this Agreed Order, remove all waste materials from the Site and dispose of the waste at an authorized facility; and<br><br>d. Within 45 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 through c. |

# Penalty Calculation Worksheet (PCW)

TCEQ

*Policy Revision 2 (September 2002)* — *PCW Revision December 8, 2006*

| DATES | | | | | |
|---|---|---|---|---|---|
| Assigned | 5-Feb-2007 | | | | |
| PCW | 14-Feb-2007 | Screening | 15-Feb-2007 | EPA Due | |

**RESPONDENT/FACILITY INFORMATION**

| | | | |
|---|---|---|---|
| Respondent | John Benoit | | |
| Reg. Ent. Ref. No. | RN105120737 | | |
| Facility/Site Region | 10-Beaumont | Major/Minor Source | Minor |

**CASE INFORMATION**

| | | | |
|---|---|---|---|
| Enf./Case ID No. | 32740 | No. of Violations | 2 |
| Docket No. | 2007-0277-MLM-E | Order Type | 1660 |
| Media Program(s) | Municipal Solid Waste | Enf. Coordinator | Alison Echlin |
| Multi-Media | Air Quality | 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* $8,500

**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 a NOV or an Order within the past five years for this site.

**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.

50% Enhancement* — *Subtotal 6* $4,250

**Capped at the Total EB $ Amount*

| | |
|---|---|
| Total EB Amounts | $28,214 |
| Approx. Cost of Compliance | $49,660 |

**SUM OF SUBTOTALS 1-7** — *Final Subtotal* $12,750

**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* $12,750

**STATUTORY LIMIT ADJUSTMENT** — *Final Assessed Penalty* $12,750

**DEFERRAL** — 20% Reduction — *Adjustment* -$2,550

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** $10,200

**Screening Date** 15-Feb-2007 **Docket No.** 2007-0277-MLM-E **PCW**

**Respondent** John Benoit

**Case ID No.** 32740

**Reg. Ent. Reference No.** RN105120737

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Alison Echlin

*Policy Revision 2 (September 2002)*

*PCW Revision December 8, 2006*

## 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)**

N/A

***Adjustment Percentage (Subtotal 3)*** 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

***Adjustment Percentage (Subtotal 7)*** 0%

>> **Compliance History Summary**

**Compliance History Notes**

The Respondent has not received a NOV or an Order within the past five years for this site.

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

**Screening Date** 15-Feb-2007 **Docket No.** 2007-0277-MLM-E **PCW**

**Respondent** John Benoit *Policy Revision 2 (September 2002)*

**Case ID No.** 32740 *PCW Revision December 8, 2006*

**Reg. Ent. Reference No.** RN105120737

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Alison Echlin

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 330.15(c)

**Violation Description** Failed to prevent the disposal of municipal solid waste at an unauthorized site, as documented during an investigation conducted on December 7, 2006. Specifically, the Respondent allowed approximately 3,820 cubic yards of municipal solid waste, including sheet metal, concrete, and other construction materials, to be disposed of at the unauthorized site.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | x | |
| Potential | | | |

**Percent** 25%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent** 0%

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

**Adjustment** $7,500

$2,500

## Violation Events

Number of Violation Events 3

76 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| monthly | x |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $7,500

Three monthly events are recommended from the December 7, 2006 investigation date to the February 21, 2007 screening date.

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $1,122

## Statutory Limit Test

**Violation Final Penalty Total** $11,250

**This violation Final Assessed Penalty (adjusted for limits)** $11,250

# Economic Benefit Worksheet

**Respondent** John Benoit
**Case ID No.** 32740
**Reg. Ent. Reference No.** RN105120737
**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 | $24,830 | 7-Dec-2006 | 2-Nov-2007 | 0.9 | $1,122 | n/a | $1,122 |
| Permit Costs | | | | 0.0 | $0 | n/a | $0 |
| Other (as needed) | | | | 0.0 | $0 | n/a | $0 |
| **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 DELAYED costs**: Estimated cost to dispose of approximately 1,910 cubic yards of waste, one half of the original amount of waste documented during the investigation which remained after burning, at a permitted municipal solid waste landfill at $13 per cubic yard from the investigation date December 7, 2006 until the estimated date of compliance November 2, 2007.

**Notes for AVOIDED costs**:

**Approx. Cost of Compliance** $24,830

**TOTAL** $1,122

**Screening Date** 15-Feb-2007 **Docket No.** 2007-0277-MLM-E **PCW**

**Respondent** John Benoit *Policy Revision 2 (September 2002)*

**Case ID No.** 32740 *PCW Revision December 8, 2006*

**Reg. Ent. Reference No.** RN105120737

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Alison Echlin

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 111.201 and Tex. Health and Safety Code § 382.085(b)

**Violation Description** Failed to comply with the general prohibition on outdoor burning, as documented during an investigation conducted on December 7, 2006. Specifically, during the investigation, the Respondent was observed burning a pile of construction debris and several other piles of previously burned debris were observed at the Site. Approximately, 1,910 cubic yards of construction debris have been disposed by burning.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

| | Release | Harm: Major | Moderate | Minor |
|---|---|---|---|---|
| OR | Actual | | | x |
| | Potential | | | |

**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 | 76 Number of violation days

*mark only one with an 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

**Estimated EB Amount** $27,092

## Statutory Limit Test

**Violation Final Penalty Total** $1,500

**This violation Final Assessed Penalty (adjusted for limits)** $1,500

# Economic Benefit Worksheet

**Respondent** John Benolt
**Case ID No.** 32740
**Reg. Ent. Reference No.** RN105120737
**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 | | | | 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] | $24,830 | 7-Dec-2006 | 2-Nov-2007 | 1.8 | $2,262 | $24,830 | $27,092 |
| Other (as needed) | | | | 0.0 | $0 | $0 | $0 |
| Notes for AVOIDED costs | Estimated cost to properly dispose of the volume of waste that was disposed of by burning based on $13 per cubic yard and 1,910 cubic yards of waste. | | | | | | |

Approx. Cost of Compliance: $24,830 — TOTAL: $27,092

# Compliance History

| | | | | |
|---|---|---|---|---|
| Customer/Respondent/Owner-Operator: | CN603128372 | BENOIT, JOHN | Classification: | Rating: |
| Regulated Entity: | RN105120737 | VACANT PROPERTY | Classification: | Site Rating: |

ID Number(s):

Location: BIG HILL RD, SOUTH OF HIGHWAY 73, BEAUMONT, TX, 77705

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: February 09, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 09, 2002 to February 09, 2007

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

Name: Alison Echlin Phone: 512-239-3308

## 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 02/02/2007 (537082)

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** |
| **JOHN BENOIT** | § | |
| **RN105120737** | § | **ENVIRONMENTAL QUALITY** |

**AGREED ORDER**
**DOCKET NO. 2007-0277-MLM-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 John Benoit ("Mr. Benoit") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Benoit appear before the Commission and together stipulate that:

1. Mr. Benoit owns approximately 350 acres of land that includes an unauthorized disposal site located on Big Hill Road, south of Highway 73, in Beaumont, Jefferson 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 and consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

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

4. Mr. Benoit received notice of the violations alleged in Section II ("Allegations") on or about February 7, 2007.

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

6. An administrative penalty in the amount of Twelve Thousand Seven Hundred Fifty Dollars ($12,750) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). Mr. Benoit has paid Ten Thousand Two Hundred Dollars ($10,200) of the administrative penalty and Two Thousand Five Hundred Fifty Dollars ($2,550) is deferred contingent upon Mr. Benoit'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 Mr. Benoit fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Benoit 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 Mr. Benoit 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 Mr. Benoit 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, Mr. Benoit is alleged to have:

1. Failed to prevent the disposal of municipal solid waste at an unauthorized site, in violation of 30 TEX. ADMIN. CODE § 330.15(c), as documented during an investigation conducted on December 7, 2006. Specifically, Mr. Benoit allowed approximately 3,820 cubic yards of municipal solid waste, including sheet metal, concrete, and other construction materials, to be disposed of at the unauthorized site.

2. Failed to comply with the general prohibition on outdoor burning, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on December 7, 2006. Specifically, during the investigation, Mr. Benoit was observed burning a pile of construction debris and several other piles of previously burned debris were observed at the Site. Approximately 1,910 cubic yards of construction debris have been disposed by burning.

## III. DENIALS

Mr. Benoit generally denies each allegation in Section II ("Allegations").

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Benoit pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Benoit'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: John Benoit, Docket No. 2007-0277-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. It is further ordered that Mr. Benoit shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Agreed Order, cease all unauthorized burning of waste materials;

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

   c. Within 30 days after the effective date of this Agreed Order, remove all waste materials from the Site and dispose of the waste at an authorized facility; and

   d. Within 45 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(s). 2.a through 2.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:

Municipal Solid Waste Section, Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Benoit. Mr. Benoit 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 Mr. Benoit 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, Mr. Benoit's failure to comply is not a violation of this Agreed Order. Mr. Benoit shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Benoit shall notify the Executive Director within seven days after Mr. Benoit 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 Mr. Benoit shall be made in writing to the Executive Director. Extensions are not effective until Mr. Benoit 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 Mr. Benoit 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 Mr. Benoit, or three days after the date on which the Commission mails notice of the Order to Mr. Benoit, 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

John Sadler
For the Executive Director

8/16/2007
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.

John M Benoit
Signature

4/2/07
Date

John M. Benoit
Name (Printed or typed)
Authorized Representative of
John Benoit

Owner
Title

**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.