

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2004-0191-MSW-E **TCEQ ID:** Municipal Solid Waste Permit No. 948-A  
12691

**CASE NO.:**

**RESPONDENT NAME:** City of Waco

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> City of Waco Landfill, 11400 Old McGregor Road, Waco, McLennan County</p> <p><b>TYPE OF OPERATION:</b> Municipal solid waste landfill</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on March 12, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>SEP Coordinator:</b> Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768  <b>TCEQ Enforcement Coordinator:</b> Mr. J. Craig Fleming, Enforcement Division, Enforcement Section II, MC 219 (512) 239-5806, Enforcement Division; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896  <b>TCEQ Field Investigator:</b> Ms. Diane Massey, Waco Regional Office, MC R-09, (254) 751-0335  <b>Respondent:</b> The Honorable Linda Ethridge, Mayor, City of Waco, P. O. Box 2570, Waco, Texas 76702                  Mr. Larry D. Groth, City Manager, City of Waco, P. O. Box 2570, Waco, Texas 76702  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> October 16, 2003</p> <p><b>Date of NOE Relating to this Case:</b> December 22, 2003 (NOE)</p> <p><b>Background Facts:</b> This was a routine scheduled investigation for compliance with the municipal solid waste program. Three significant program violations were observed.</p> <p><b>WASTE</b></p> <p>1) Failure to apply intermediate cover in place in portions of cell number 3 within 30 days of inactivity [30 TEX. ADMIN. CODE §§ 330.111, 330.139, 330.5(a)(1), and 330.55(b), TEX. WATER CODE § 26.121(a)(1), and MSW Permit 948-A, Attachment 15, Leachate and Contaminated Water Plan, Section 2, and Part C, Landfill Operating Plan, Section C.9.4.].</p> <p>2) Failure to prevent unauthorized discharge of contaminated water into or adjacent to any water in the state, and failure to maintain run-off containment system designed to minimize the off-site release of surface waters that contacts operational portions of the landfill [30 TEX. ADMIN. CODE §§ 330.111, 330.139, 330.5(a)(1), and 330.55(b), TEX. WATER CODE § 26.121(a)(1), and MSW Permit 948-A, Attachment 15, Leachate and Contaminated Water Plan, Section 2, and Part C, Landfill Operating Plan, Section C.9.4.].</p> <p>3) Failure to modify the Facility operations to monitor the leachate monthly or after significant rain events and to follow the approved Leachate and Contaminated Water Plan for the proper</p>	<p><b>Total Assessed:</b> \$18,750</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$18,750</p> <p><b>Total Paid (Due) to General Revenue:</b> \$0</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A).</p> <p>2) The Order will require the Respondent to:</p> <p>a) Within 30 days after the effective date of this Agreed Order:</p> <p>i. Repair and/or apply intermediate cover to cell number 3; and</p> <p>ii. Construct and begin maintaining run-on and/or run-off control systems designed to minimize the off-site release of surface water that contacted operations portions of the landfill.</p> <p>b) Within 45 days after the effective date of this Agreed Order, certify compliance with Ordering Provision 2.a.</p> <p>c) Within 30 days after the effective date of this Agreed Order, submit payment of the deferred administrative penalty for Docket No. 2001-0907-MSW-E;</p> <p>d) Within 90 days after the effective date of this Agreed Order, submit an administratively complete and technically correct application for a Class 1 modification concerning changes or additional information as to the operation of leachate disposal concerning the re-circulation of leachate into Resource Conservation Recovery Act SUBTITLE D lined areas, in accordance with Municipal Solid Waste Landfill Permit 948-A, Attachment 15, Leachate and Contaminated Water Plan. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning its amendment application for Municipal Solid Waste Permit No. 948-A within 30 days after the</p>

<p>storage and/or handling of leachate. Specifically, the City had not modified the Facility operations to comply with the Agreed Order [30 TEX. ADMIN. CODE §§ 330.111 and 330.8(b), Municipal Solid Waste Permit 948-A, Attachment 15 Leachate and Contaminated Water Plan, and Order Docket No. 2001-0907-MSW-E, Ordering Provisions 3.f. and g.].</p>		<p>date of such requests, or by any other deadline specified in writing;</p> <p>e) Within 105 days after the effective date of this Agreed Order, certify compliance with Ordering Provision 3.d.;</p> <p>f) Within 120 days after the effective date of this Agreed Order, submit written certification that the landfill is operating by the Class 1 modification or that this operation has ceased until such time that appropriate authorization is obtained. This certification shall, include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, and be notarized by a State of Texas Notary Public.</p>
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## Attachment A

### SUPPLEMENTAL ENVIRONMENTAL PROJECT

**Respondent:** City of Waco  
**Docket Number:** 2004-0191-MSW-E  
**Penalty Amount:** Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750)  
**SEP Amount:** Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750)  
**Type of SEP:** Custom  
**Location of SEP:** McLennan County

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

#### 1. Project Description

##### A. Project

The Respondent shall connect to the City of Waco's wastewater collection system approximately five low to moderate-income residences' homes, which are currently on the septic systems. The project shall include purchasing and installing 1,750 linear feet of 8" sewer lines along S. Loop 340 and connecting the residences to the City of Waco's central sewer. The Respondent shall properly decommission the residents' old septic tanks. This project shall be done at no cost to the homeowners. The SEP shall be done in accordance with all federal, state and local environmental laws and regulations. The Respondent shall use SEP monies only for the direct cost of implementing the project and no portion shall be spent on administrative costs.

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

##### B. Environmental Benefit

This SEP shall provide a discernible environmental benefit by diminishing the potential health threats associated with release of septage or untreated sewage to the environment, reducing the potential for contamination of the watershed that would result from discharges, protecting the quality of drinking water, and reducing the likelihood of pollution from septic system leakage.

##### C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A.



Subject to previously stated restrictions on the use of SEP monies and to the extent it can be documented, the Respondent shall receive credit for the overtime hours its employees worked and the FEMA schedule of rates for its equipment used in implementing the SEP. Equipment credits shall be based on the schedule of equipment rates published by the Federal Emergency Management Agency. The City of Waco shall not receive credit for volunteer labor or equipment. The Respondent shall also not receive credit for gratuities and/or inducements for volunteers.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin implementation of this SEP. The project shall be completed within one year after the effective date of this order.

**3. Records and Reporting**

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall begin submitting quarterly reports to the TCEQ indicating the progress made to date and its compliance with the schedule for achieving completion within the time required above.

B. Final Report

Within 30 days after completion of the project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and costs incurred with receipts, copies of checks, or other verifying documentation attached;
2. The total amount of costs incurred;
3. A statement of quantifiable environmental benefits;
4. Number of homes actually connected;
5. Map showing specific location of the project area after completion;
6. Photographs of the project; and
7. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

Copies of receipts, checks, invoices, and other documentation verifying appropriate expenditures and the completion of the project must be submitted with the final report.

C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following address:



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

The Respondent agrees to provide additional information required by the SEP Coordinator and allow access to all financial records related to the receipt and expenditure of SEP monies and to allow a representative of the TCEQ, upon request, access to the site of any work being financed in whole or in part by SEP monies. All SEP reports and information shall be submitted to the following address:

TCEQ  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Additional Information and Access**

The Respondent shall provide any additional information required by the staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

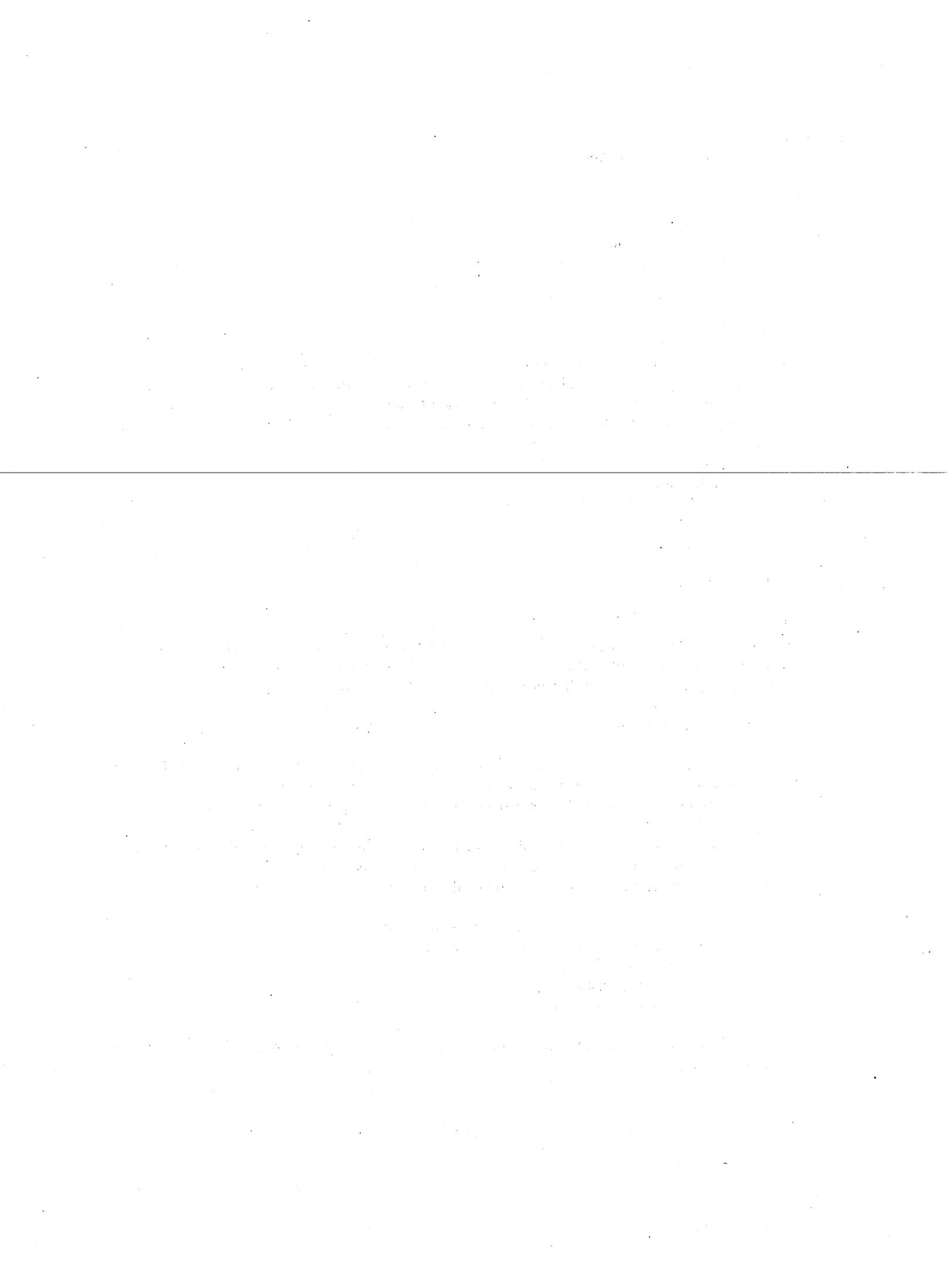
**5. Failure to Fully Perform**

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

With the payment, the Respondent shall include the docket number of this Agreed Order and a note that it is for reimbursement of an SEP. The payment for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

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



**6. Publicity**

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

**7. Clean Texas Program**

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

**8. Other SEPs by TCEQ or Other Agencies**

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





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (09/02)

PCW Revision 2/10/2004

**DATES**

PCW  Screening  Priority Due  EPA Due

**RESPONDENT INFORMATION**

Respondent   
 Respondent/Site ID No(s).   
 Facility/Site Region  Major/Minor Source

**CASE INFORMATION**

Enf./Case ID No(s).   
 Docket No.  No. Violations   
 Case Priority  Order Type   
 Enf. Coordinator  EC's Team   
 Media Program(s)   
 Admin. Penalty \$ Limit Minimum  Maximum

## Penalty Calculation Section

**TOTAL BASE PENALTY** (Sum of violation base penalties)

Subtotal 1

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History**  Enhancement **Subtotals 2, 3 & 7**

Notes

**Culpability**  Enhancement **Subtotal 4**

Notes  Select Yes/No  
 The respondent does not meet the culpability criteria.

**Good Faith Effort to Comply**  Reduction **Subtotal 5**

Before NOV NOV to EDPRP/Settlement Offer  
 Extraordinary   
 Ordinary   
 None of the above  (mark with small x)  
 Notes

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts \*Capped at the Total EB \$ Amount  
 Approx. Cost of Compliance

**SUM OF SUBTOTALS 1-7**

Final Subtotal

**OTHER FACTORS AS JUSTICE MAY REQUIRE**

Adjustment

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

Notes

Final Penalty Amount

**STATUTORY LIMIT ADJUSTMENT**

Final Assessed Penalty

**DEFERRAL**

Deferral  Reduction

Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (enter number only; e.g. 20 for 20% reduction)

Notes

**PAYABLE PENALTY**

<b>Screening Date</b> 11-Feb-2004	<b>Docket Number</b> 2004-0191-MSW-E
<b>Respondent</b> City of Waco	<b>PCW</b> <b>Policy Revision 2 (09/02)</b>
<b>Case ID No.</b> Case No. 12691	<b>PCW Revision 2/10/2004</b>
<b>Respondent/Site ID No.</b> Municipal Solid Waste Permit No. 948-A	
<b>Media [Statute]</b> Municipal Solid Waste	
<b>Enf. Coordinator</b> J. Craig Fleming	
<b>Site Address</b> 11400 Old McGregor Road, Waco, McLennan County	

**Compliance History Worksheet**

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	1	5%
	Other written NOV's	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	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%
<i>Please enter Yes or No</i>			
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)**

>> **Repeat Violator (Subtotal 3)**

Select Yes/No

**Adjustment Percentage (Subtotal 3)**

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

Select High, Average or Poor

**Adjustment Percentage (Subtotal 7)**

**Compliance History Summary**

**Compliance History Notes**

The penalty is enhanced 25% because the respondent has one NOV for the same violations, and one Agreed Order Docket No. 2001-0907-MSW-E.

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

<b>Screening Date</b>	11-Feb-04	<b>Docket Number</b>	2004-0191-MSW-E	<b>PCW</b>
<b>Respondent</b>	City of Waco			Policy Revision 2 (09/02)
<b>Case ID No.</b>	Case No. 12691			PCW Revision 2/10/2004
<b>Respondent/Site ID No.</b>	Municipal Solid Waste Permit No. 948-A			
<b>Media [Statute]</b>	Municipal Solid Waste			
<b>Enf. Coordinator</b>	J. Craig Fleming			
<b>Violation Number</b>	1			
<b>Primary Rule Cite</b>	30 Tex. Admin. Code §§ 330.111, 330.133(b) and (f); Municipal Solid Waste Permit 948-A, Attachment 15, Leachate and Contaminated Water Plan , Section 2; and Landfill Operating Plan, Section C.5.5.			
<b>Secondary Cite(s)</b>				
<b>Violation Description</b>	Failure to apply intermediate cover in place on portions of cell number 3 within 30 days of inactivity. Specifically, exposed waste and erosion were observed on the southeast and southwest slopes of cell 3, as documented by the TCEQ Waco Region investigator on October 16, 2003.			
		<b>Base Penalty</b>		\$10,000
» Environmental, Property and Human Health Matrix				
		<b>Harm</b>		
	<b>Release</b>	Major	Moderate	Minor
OR	Actual			
	Potential		x	
			<b>Percent</b>	25%
» Programmatic Matrix				
OR	Falsification	Major	Moderate	Minor
			<b>Percent</b>	
<b>Matrix Notes</b>	Failure to apply intermediate and/or final cover will or could expose human health or the environment to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.			
		<b>Adjustment</b>		-\$7,500
		<b>Base Penalty Subtotal</b>		\$2,500
Violation Events				
	<b>Number of Violation Events</b>	2		
<i>mark only one; use small x</i>	daily			
	monthly			
	quarterly	x		
	semiannual			
	annual			
	single event			
		<b>Violation Base Penalty</b>		\$5,000
<b>Events Notes</b>	Two quarterly events are recommended based on the investigation date of October 16, 2003 to the screening date of February 11, 2004.			
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
	<b>Estimated EB Amount (\$)</b>	\$14	<b>Violation Final Penalty total</b>	\$6,250
	<b>This Violation Final Assessed Penalty (adjusted for limits)</b>			\$6,250

### Economic Benefit Worksheet

Respondent City of Waco  
 ID Number(s) Case No. 12691  
 Media [Statute] Municipal Solid Waste  
 Violation Number 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$250	16-Oct-2003	1-Aug-2004	0.8	\$1	\$13	\$14
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

Estimated cost to apply intermediate and/or final cover to an inactive area of a current cell. The Date Required is the date of the investigation, and the Final Date is the expected date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equip				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

NA

Approx Cost of Compliance

TOTAL

Screening Date 11-Feb-04

Docket Number 2004-0191-MSW-E

PCW

Respondent City of Waco

Policy Revision 2 (09/02)

Case ID No. Case No. 12691

PCW Revision 2/10/2004

Respondent/Site ID No. Municipal Solid Waste Permit No. 948-A

Media [Statute] Municipal Solid Waste

Enf. Coordinator J. Craig Fleming

Violation Number

2

Primary Rule Cite

Tex. Water Code § 26.121(a)(1); 30 Tex. Admin. Code §§ 330.111, 330.139, 330.5(a)(1), and 330.55(b); Municipal Solid Waste Permit 948-A, Attachment 15, Leachate and Contaminated Water Plan, Section 2; and Part C, Landfill Operating Plan, Section C.9.4.

Secondary Cite(s)

Violation Description

Failure to prevent unauthorized discharge of contaminated water into or adjacent to any water in the state, and failure to maintain run-off containment systems designed to minimize the off-site release of surface water that contacted operational portions of the landfill. Specifically, discharges were documented by the TCEQ Waco Region investigator on October 16, 2003.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor
Actual			x
Potential			

Percent 25%

» Programmatic Matrix

	Falsification	Major	Moderate	Minor
OR				

Percent

Matrix Notes

The unauthorized discharges of contaminated water and failure to maintain a run-off containment system has exposed human health or the environment to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

Events Notes

One single event is recommended based on the investigation date of October 16, 2003.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$28

Violation Final Penalty total \$3,125

This Violation Final Assessed Penalty (adjusted for limits) \$3,125

### Economic Benefit Worksheet

**Respondent** City of Waco  
**ID Number(s)** Case No. 12691  
**Media [Statute]** Municipal Solid Waste  
**Violation Number** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
<b>Delayed Costs:</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$500	16-Oct-2003	1-Aug-2004	0.8	\$1	\$26	\$28
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

Estimated costs of containment and disposal of contaminated storm water, and maintenance of a run-off containment system designed to minimize the off-site release of surface water that contacts operational portions of the landfill. The Date Required is the date of the inspection, and Final Date is the expected date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equip				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

NA

Approx Cost of Compliance

**TOTAL**

**Screening Date** 11-Feb-04 **Docket Number** 2004-0191-MSW-E

**PCW**

**Respondent** City of Waco

Policy Revision 2 (09/02)

**Case ID No.** Case No. 12691

PCW Revision 2/10/2004

**Respondent/Site ID No.** Municipal Solid Waste Permit No. 948-A

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** J. Craig Fleming

**Violation Number** 3

**Primary Rule Cite**

30 Tex. Admin. Code §§ 330.111 and 330.8(b); Municipal Solid Waste Permit 948-A, Attachment 15, Leachate and Contaminated Water Plan; and Order Docket No. 2001-0907-MSW-E, Ordering Provisions 3(f) and (g).

**Secondary Cite(s)**

**Violation Description**

Failure to modify the facility operations to monitor the leachate monthly or after significant rain events, and to follow the approved Leachate and Contaminated Water Plan for the proper storage and/or handling of leachate. Specifically, the respondent had not modified the facility operations to comply with the Agreed Order, as documented by the TCEQ Waco Region investigator on October 16, 2003.

**Base Penalty** \$10,000

» Environmental, Property and Human Health Matrix

**Harm**

Release	Major	Moderate	Minor
Actual			
Potential		x	

**Percent** 25%

» Programmatic Matrix

Falsification	Major	Moderate	Minor

**Percent**

**Matrix Notes**

Failure to document leachate activities will or could expose human health or the environment to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** -\$7,500

**Base Penalty Subtotal** \$2,500

**Violation Events**

**Number of Violation Events** 2

*mark only one; use small x*

daily	
monthly	
quarterly	
semiannual	
annual	x
single event	

**Violation Base Penalty** \$5,000

**Events Notes**

Two annual events are recommended based on the date of issuance of the previous Agreed Order on December 12, 2002, to the screening date of February 11, 2004.

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount (\$)** \$205

**Violation Final Penalty total** \$6,250

**This Violation Final Assessed Penalty (adjusted for limits)** \$6,250

### Economic Benefit Worksheet

**Respondent** City of Waco  
**ID Number(s)** Case No. 12691  
**Media [Statute]** Municipal Solid Waste  
**Violation Number** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	\$2,500	12-Dec-2002	1-Aug-2004	1.6	\$205	n/a	\$205
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to re-train personnel and to set up a tracking database or other method to follow the prescribed Leachate and Contaminated Water Plan. The Date Required is the date of issuance of the previous Agreed Order on December 12, 2002, and the Final Date is the expected date of compliance.

**Avoided Costs**

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equip				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

NA

Approx Cost of Compliance **\$2,500**

**TOTAL**

**\$205**

## Compliance History

Customer/Respondent/Owner-Operator: CN600131940 City of Waco Classification: AVERAGE Rating: 9.85

Regulated Entity: RN102804051 CITY OF WACO LANDFILL Classification: POOR Site Rating: 82.45

ID Number(s):

MUNICIPAL SOLID WASTE PROCESSING	REGISTRATION	47003
MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	948A
PETROLEUM STORAGE TANK	REGISTRATION	58100
REGISTRATION		
STORMWATER	PERMIT	TXR05P840

Location: 11400 OLD MCGREGOR RD, WACO, TX, 76712

Rating Date: 9/1/03 Repeat Violator: NO

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: February 11, 2004

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 11, 1999 to February 11, 2004

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Craig Fleming Phone: 239-5806

### 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.

Effective Date: 12/12/02

ADMINORDER 2001-0907-MSW-E

Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter E 330.55(b)(2)  
 Citation: Attch.15,sect.7 PERMIT  
 Description: Failure to maintain run-on control berms at the active portion of the landfill.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter E 330.55(b)(3)  
 Citation: Attach 15,Sec 7 PERMIT  
 Description: Failure to maintain run-off control berms at the active portion of the landfill.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter F 330.133(a)  
 Citation: Att 15,Pt C.5.5 PERMIT  
 Description: Failure to apply six inches of well compacted earthen material daily.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter F 330.117(a)  
 Description: Failure to maintain the working face as small an area as possible, and provide directional signs for the unloading of waste.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter F 330.127(c)  
 Citation: Att 15,Sec C5.1 PERMIT  
 Description: Failure to maintain site access roads by returning litter and other debris to the active working face.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter F 330.133(g)  
 Description: Failure to provide required information on cover application log.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter E 330.55(b)(4)  
 Description: Failure to grade drainage structures and diversion channels slopes to minimize erosion.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter F 330.111

30 TAC Chapter 330, SubChapter F 330.133(f)  
 Description: Failure to maintain intermediate and/or final cover.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter F 330.120[G]  
 Citation: Att 15, Sec C5.1 PERMIT  
 Description: Failure to return windblown materials to the active working face at least weekly.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter F 330.134  
 Description: Failure to prevent ponded water.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter A 330.5(a)(1)  
 30 TAC Chapter 330, SubChapter F 330.139  
 TWC Chapter 26 26.121  
 Description: Failure to prevent unauthorized discharge into or adjacent to waters of the state.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter H 330.206(e)  
 Description: Failure to provide re-certification of protective cover every six months until all areas are covered with waste.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter F 330.133(b)  
 Description: Failure to provide intermediate cover in inactive areas of the current cell within 30 days.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter F 330.111  
 Citation: Att 15, Sec 4 PERMIT  
 Description: Failure to follow the approved leachate and contaminated water plan, and notify of change in operating leachate disposal.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter A 330.8(b)  
 Description: Failure to notify of changes in the operation of leachate disposal.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter F 330.113(a)  
 Description: Failure to maintain current Storm Water Pollution Prevention Plan (SWPPP).  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter E 330.55(b)(10)(F)  
 Description: Failure to provide sufficient grid markers at the active working face.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter F 330.122  
 Description: Failure to provide sufficient buffer markers at the active working face.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter F 330.122  
 Description: Failure to provide sufficient 100-year flood plain markers.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter E 330.55(b)(10)(B)(iii)  
 Description: Failure to provide sufficient easement markers.

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

N/A

C. Chronic excessive emissions events.

N/A

D. The dates of investigations.

2 02/05/2004  
 4 09/19/2003  
 6 03/30/2001  
 8 10/08/2002  
 10 08/27/2002  
 12 08/28/2000  
 14 03/24/2000  
 16 03/20/2000  
 18 03/20/2000  
 20 03/20/2000  
 22 05/27/1999  
 24 08/28/2003

N/A

E. Written notices of violations (NOV).

1. Date: 03/05/2003

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 330, SubChapter F 330.111  
Rqmt Prov: OP IA  
Description: The operator shall modify the facility operations as to comply with the Leachate and Contaminated Water Plan.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 330, SubChapter A 330.8(b)  
Description: The operator shall provide written notice to the executive director of any changes or additional information concerning waste management methods.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 330, SubChapter A 330.8(b)  
30 TAC Chapter 330, SubChapter F 330.111  
Description: Within 60 days after the effective date of this Agreed Order, certify compliance with Ordering provisions 3.f. and 3.g.

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

K. Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING THE  
CITY OF WACO  
MUNICIPAL SOLID WASTE PERMIT  
NO. 948-A**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2004-0191-MSW-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Waco ("City") under the authority of the TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. 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 a municipal solid waste landfill for the City of Waco at 11400 Old McGregor Road in Waco, McLennan 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 December 27, 2003.
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 Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP").



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 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.
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 Facility, the City is alleged to have:

1. Failed to apply intermediate cover in place on portions of cell number 3 within 30 days of inactivity, in violation of 30 TEX. ADMIN. CODE §§ 330.111, 330.133(b) and (f); Municipal Solid Waste Permit 948-A, Attachment 15, Leachate and Contaminated Water Plan, Section 2; and Landfill Operating Plan, Section C.5.5, as documented during an investigation conducted on October 16, 2003;
2. Failed to prevent unauthorized discharge of contaminated water into or adjacent to any water in the state, and failure to maintain run-off containment systems designed to minimize the off-site release of surface waters that contacts operational portions of the landfill, in violation of 30 TEX. ADMIN. CODE §§ 330.111, 330.139, 330.5(a)(1), and 330.55(b); TEX. WATER CODE § 26.121(a)(1); Municipal Solid Waste Permit 948-A, Attachment 15, Leachate and Contaminated Water Plan, Section 2; and Part C, Landfill Operating Plan, Section C.9.4, as documented during an investigation conducted on October 16, 2003;
3. Failed to modify the Facility operations to monitor the leachate monthly or after significant rain events, and to follow the approved Leachate and Contaminated Water Plan for the proper storage and/or handling of leachate, in violation of 30 TEX. ADMIN. CODE §§ 330.111 and 330.8(b); Municipal Solid Waste Permit 948-A, Attachment 15 Leachate and Contaminated Water Plan; and Order Docket No. 2001-0907-MSW-E, Ordering Provisions 3.f. and g., as documented during an investigation conducted on October 16, 2003. Specifically, the City had not modified the Facility operations to comply with the Agreed Order.



### 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 imposition 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 Waco, Docket No. 2004-0191-MSW-E" to:

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

2. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the City shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order:
    - i. Repair and/or apply intermediate cover to cell number 3, in accordance with 30 TEX. ADMIN. CODE § 330.133(b) and (f); and
    - ii. Construct and begin maintaining run-on and/or run-off control systems designed to minimize the off-site release of surface water that contacted operational portions of the landfill, in accordance with Municipal Solid Waste Landfill Permit 948-A.
  - b. Within 45 days after the effective date of this Agreed Order, certify compliance with Ordering Provision 3.a;
  - c. Within 30 days after the effective date of this Agreed Order, submit payment of the deferred administrative penalty for Docket No. 2001-0907-MSW-E;



- d. Within 90 days after the effective date of this Agreed Order, submit an administratively complete and technically correct application for a Class 1 modification concerning changes or additional information as to the operation of leachate disposal concerning the re-circulation of leachate into Resource Conservation Recovery Act SUBTITLE D lined areas, in accordance with Municipal Solid Waste Landfill Permit 948-A, Attachment 15, Leachate and Contaminated Water Plan. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning its amendment application for Municipal Solid Waste Permit No. 948-A within 30 days after the date of such requests, or by any other deadline specified in writing;
- e. Within 105 days after the effective date of this Agreed Order, certify compliance with Ordering Provision 3.d;
- f. Within 120 days after the effective date of this Agreed Order, submit written certification that the landfill is operating by the Class 1 modification or that this operation has ceased until such time that appropriate authorization is obtained. This certification shall, include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public Notary 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."; and

- g. Submit copies of all correspondence, reports, and documentation required by these Ordering Provisions to:

Order Compliance Team  
Enforcement Division, MC-149  
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



4. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Zedler  
For the Executive Director

\_\_\_\_\_  
Date 10/18/07

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 p[ermit 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 action 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<sup>3</sup> documents may result in criminal prosecution.

Joseph A. Brubaker  
Signature

12/13/06  
Date

Larry D. Groth  
Name (Printed or typed)  
Authorized Representative of  
the City of Waco

City Manager  
Title

12/13/06  
OC MS

**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.

Faint header text at the top of the page, possibly containing a date or reference number.

Second line of faint text, appearing to be a title or subject line.

Third line of faint text, possibly a recipient address or a salutation.

Fourth line of faint text, likely the beginning of the main body of the document.

Fifth line of faint text, continuing the main body of the document.

Sixth line of faint text, continuing the main body of the document.

Seventh line of faint text, continuing the main body of the document.

Eighth line of faint text, continuing the main body of the document.

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## Attachment A

### SUPPLEMENTAL ENVIRONMENTAL PROJECT

**Respondent:** City of Waco  
**Docket Number:** 2004-0191-MSW-E  
**Penalty Amount:** Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750)  
**SEP Amount:** Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750)  
**Type of SEP:** Custom  
**Location of SEP:** McLennan County

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

#### 1. Project Description

##### A. Project

The Respondent shall connect to the City of Waco’s wastewater collection system approximately five low to moderate-income residences’ homes, which are currently on the septic systems. The project shall include purchasing and installing 1,750 linear feet of 8” sewer lines along S. Loop 340 and connecting the residences the City of Waco’s central sewer. The Respondent shall properly decommission the residents’ old septic tanks. This project shall be done at no cost to the homeowners. The SEP shall be done in accordance with all federal, state and local environmental laws and regulations. The Respondent shall use SEP monies only for the direct cost of implementing the project and no portion shall be spent on administrative costs.

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

##### B. Environmental Benefit

This SEP shall provide a discernible environmental benefit by diminishing the potential health threats associated with release of septage or untreated sewage to the environment, reducing the potential for contamination of the watershed that would result from discharges, protecting the quality of drinking water, and reducing the likelihood of pollution from septic system leakage.

##### C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A.



Subject to previously stated restrictions on the use of SEP monies and to the extent it can be documented, the Respondent shall receive credit for the overtime hours its employees worked and the FEMA schedule of rates for its equipment used in implementing the SEP. Equipment credits shall be based on the schedule of equipment rates published by the Federal Emergency Management Agency. The City of Waco shall not receive credit for volunteer labor or equipment. The Respondent shall also not receive credit for gratuities and/or inducements for volunteers.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin implementation of this SEP. The project shall be completed within one year after the effective date of this order.

**3. Records and Reporting**

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall begin submitting quarterly reports to the TCEQ indicating the progress made to date and its compliance with the schedule for achieving completion within the time required above.

B. Final Report

Within 30 days after completion of the project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and costs incurred with receipts, copies of checks, or other verifying documentation attached;
2. The total amount of costs incurred;
3. A statement of quantifiable environmental benefits;
4. Number of homes actually connected;
5. Map showing specific location of the project area after completion;
6. Photographs of the project; and
7. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

Copies of receipts, checks, invoices, and other documentation verifying appropriate expenditures and the completion of the project must be submitted with the final report.

C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following address:



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

The Respondent agrees to provide additional information required by the SEP Coordinator and allow access to all financial records related to the receipt and expenditure of SEP monies and to allow a representative of the TCEQ, upon request, access to the site of any work being financed in whole or in part by SEP monies. All SEP reports and information shall be submitted to the following address:

TCEQ  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Additional Information and Access**

The Respondent shall provide any additional information required by the staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

**5. Failure to Fully Perform**

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

With the payment, the Respondent shall include the docket number of this Agreed Order and a note that it is for reimbursement of an SEP. The payment for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

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



**6. Publicity**

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

**7. Clean Texas Program**

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

**8. Other SEPs by TCEQ or Other Agencies**

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

