

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2004-0711-MSW-E TCEQ ID: RN104192182 CASE NO.: 15894
RESPONDENT NAME: TEXAS MEXICAN RAILWAY COMPANY

ORDER TYPE:		
<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	
CASE TYPE:		
<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>SITE WHERE VIOLATION(S) OCCURRED: one mile north of the intersection of Highway 359 and J. C. Perez Road on the east side of J. C. Perez Road, Oilton, Webb County, Texas</p> <p>TYPE OF OPERATION: Railway operation which generated municipal solid waste which was disposed of at an unauthorized landfill</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on September 8, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="padding-left: 20px;">TCEQ Attorney: Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p style="padding-left: 20px;">TCEQ Enforcement Coordinator: Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492</p> <p style="padding-left: 20px;">TCEQ Regional Contact: Ms. Rose Luna-Pirtle, Laredo Regional Office, MC R-16, (956) 753-4052</p> <p style="padding-left: 20px;">Respondent: Mr. Scott Arvidson, Executive Vice President & Chief Operating Officer, Texas Mexican Railway Company, 427 West 12th Street, Kansas City, Missouri 64105</p> <p style="padding-left: 20px;">Respondent's Attorney: Mr. Paul O. Wickes, Hunton & Williams, LLP, 1445 Ross Avenue, Suite 3700, Dallas, Texas 75202</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: November 13, 2003</p> <p>Date of NOE Relating to this Case: April 5, 2004</p> <p>Background Facts: The EDPRP was filed on November 12, 2004. The Respondent filed an answer to the EDPRP on December 3, 2004. After negotiations, the Respondent signed an Agreed Order on June 27, 2008.</p> <p>MSW</p> <p>Generating municipal solid waste from its railway operations which was disposed of in an unauthorized landfill on May 18, 1997, August 6, 1997, August 21, 1997, August 22, 1997, August 23, 1997, May 17, 1999, May 20, 1999, June 9, 1999, May 2, 2001, May 16, 2001, and May 17, 2001 [30 TEX. ADMIN. CODE § 330.15 (formally 30 TEX. ADMIN. CODE § 330.5)].</p>	<p>Initial Calculated Penalty: \$27,500</p> <p>Total Assessed: \$22,000*</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$22,000</p> <p>The Respondent has paid the administrative penalty in full.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>*Explanation of Initial Calculated Penalty Reduction:</p> <p>This case was settled for less than the penalty amount calculated after considering the risks of litigation.</p>	<p>Corrective Action(s) Taken</p> <p>The Executive Director recognizes that the Respondent completed operations on August 26, 2005, that removed the municipal solid waste they generated from the Facility.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (09/02)

PCW Revision 2/10/2004

DATES

PCW 12-Jun-2008 Screening 18-May-2004 Priority Due 15-Sep-2004 EPA Due

RESPONDENT INFORMATION

Respondent Texas Mexican Railway Company
 Respondent/Site ID No(s) RN104192182
 Facility/Site Region 16 - Laredo Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No(s) 15894
 Docket No. 2004-0711-MSW-E No. Violations 1
 Case Priority 3 Order Type 1660 without deferral
 Enf. Coordinator Michael Meyer EC's Team Enforcement Team 6
 Media Program(s) Industrial and Hazardous Waste
 Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$27,500

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: No adjustments to the penalty are recommended based on compliance history. +

Culpability 0% Enhancement **Subtotal 4** \$0

Notes: Respondent does not meet the criteria for culpability. +

Good Faith Effort to Comply 0% Reduction **Subtotal 5** \$0

Notes: This action contains past events with no current opportunity to comply. +

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

Notes: Total EB Amounts \$202, Approx. Cost of Compliance \$1,000. *Capped at the Total EB \$ Amount =

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$27,500

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment** \$0

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

Final Penalty Amount \$27,500

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$27,500

DEFERRAL **Adjustment** \$0

Notes: This is not an expedited case, therefore, no deferral is recommended. =

PAYABLE PENALTY \$27,500

Screening Date 18-May-2004
Respondent Texas Mexican Railway Company
Case ID No. 15894

Docket Number 2004-0711-MSW-E **PCW**
Policy Revision 2 (09/02)
PCW Revision 2/10/2004

Respondent/Site ID No. RN104192182
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Michael Meyer
Site Address

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 (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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

Total Adjustment Percentage (Subtotals 2, 3 & 7)

Screening Date 18-May-04	Docket Number 2004-0711-MSW-E	PCW
Respondent Texas Mexican Railway Company		Policy Revision 2 (09/02)
Case ID No. 15894		PCW Revision 2/10/2004
Respondent/Site ID No. RN104192182		
Media [Statute] Industrial and Hazardous Waste		
Enf. Coordinator Michael Meyer		
Violation Number <input type="text" value="1"/>		
Primary Rule Cite	30 Tex. Admin. Code § 330.5	
Secondary Cite(s)		
Violation Description	Respondent contracted for the disposal of industrial solid waste from train derailments and the rail yard on 5/18/97, 8/6/97, 8/21/97, 8/22/97, 8/23/97, 5/17/99, 5/20/99, 6/9/99, 5/2/01, 5/16/01, and 5/17/01. The waste was disposed of at Alan and Yolanda Black's caliche pit, an unauthorized MSW facility in Oilton, Webb County.	
	Base Penalty	\$10,000
» Environmental, Property and Human Health Matrix		
	Harm	
	Release	Major Moderate Minor
OR	Actual	<input type="text"/> <input checked="" type="text"/> <input type="text"/>
	Potential	<input type="text"/> <input type="text"/> <input type="text"/>
	Percent	<input type="text" value="25%"/>
» Programmatic Matrix		
OR	Falsification	Major Moderate Minor
	<input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/>
	Percent	<input type="text"/>
Matrix Notes	As a result of these violations, human health and the environment were exposed to significant amounts of pollutants that did not exceed levels protective of human health and environmental receptors. Respondent disposed of approximately 5400 cubic yards of material in the unauthorized landfill.	
	Adjustment	<input type="text" value="-\$7,500"/>
	Base Penalty Subtotal	\$2,500
Violation Events		
	Number of Violation Events	<input type="text" value="11"/>
mark only one; use small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text"/>
	Violation Base Penalty	\$27,500
Events Notes	During the investigation conducted on 11/13/03, the invoices that were reviewed documented that approximately 80 loads of waste disposed of at the unauthorized site on eleven days.	
Economic Benefit (EB) for this violation		
	Estimated EB Amount (\$)	<input type="text" value="\$202"/>
	Statutory Limit Test	Violation Final Penalty total
		<input type="text" value="\$27,500"/>
	This Violation Final Assessed Penalty (adjusted for limits)	
		<input type="text" value="\$27,500"/>

Economic Benefit Worksheet

Respondent Texas Mexican Railway Company
ID Number(s) 15894
Media [Statute] Industrial and Hazardous 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
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)	\$1,000	17-May-1997	30-May-2001	4.0	\$202	n/a	\$202

Notes for DELAYED costs

Developed procedures to provide additional oversight to ensure that cleanup activities, including the disposal of contamination, are conducted in accordance with state rules and regulations. The Date Required is the date of the first derailment and spill and the Final Date is the 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

Approx Cost of Compliance

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN600298699 Texas Mexican Railway Company	Classification: AVERAGE	Rating: 1.500
Regulated Entity:	RN104192182 OFF HWY 359 TURN LEFT ON J C PEREZ ROAD	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER	UNA455160026
Location:	OFF HWY 359 TURN LEFT ON J.C. PEREZ RD, OILTON, TX, 78371	Rating Date: 9/1/03	Repeat Violator: NO
TCEQ Region:	REGION 16 - LAREDO		
Date Compliance History Prepared:	May 18, 2004		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 18, 1999 to May 17, 2004		

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

Name: Sherry Smith Phone: 512/239-0572

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 03/29/2004 (262374)
 - 2 04/06/2004 (266226)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- 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
TEXAS MEXICAN RAILWAY
COMPANY, RN104192182

§
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§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2004-0711-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Texas Mexican Railway Company ("TMRC") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and TMRC represented by Paul O. Wickes of the law firm of Hunton & Williams LLP, appear before the Commission and together stipulate that:

1. TMRC owns and operates a railway operation which generated municipal solid waste which was disposed of at an unauthorized landfill located one mile north of the intersection of Highway 359 and J. C. Perez Road on the east side of J. C. Perez Road, Oilton, Webb County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Commission and TMRC agree that the Commission has jurisdiction to enter this Agreed Order, and that TMRC is subject to the Commission's jurisdiction.
4. TMRC received notice of the violations alleged in Section II ("Allegations") on or about April 10, 2004.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by TMRC of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of twenty-two thousand dollars (\$22,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). TMRC has paid twenty-two thousand dollars (\$22,000.00) of the administrative 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 TMRC have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that TMRC completed operations on August 26, 2005, that removed the municipal solid waste they generated from the Facility.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that TMRC has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

TMRC is alleged to have violated 30 TEX. ADMIN. CODE § 330.5¹ by generating municipal solid waste from its railway operations which was disposed of in an unauthorized landfill on May 18, 1997, August 6, 1997, August 21, 1997, August 22, 1997, August 23, 1997, May 17, 1999, May 20, 1999, June 9, 1999, May 2, 2001, May 16, 2001, and May 17, 2001, as documented on November 13, 2003.

¹ Effective March 27, 2006, 30 TEX. ADMIN. CODE § 330.5 was recodified as 30 TEX. ADMIN. CODE § 330.15.

III. DENIALS

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

IV. ORDER

1. It is, therefore, ordered by the TCEQ that TMRC pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and TMRC'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Texas Mexican Railway Company, Docket No. 2004-0711-MSW-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon TMRC. TMRC is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over their operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against TMRC 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.
4. 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.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to TMRC, or three days after the date on which the Commission mails notice of the Order to TMRC, 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

Burgeron Penland

For the Executive Director

8/11/08

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that 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.

Scott Arvidson

Signature

6-27-08

Date

Scott Arvidson

Name (Printed or typed)

EVP + CEO

Title

Authorized representative of

Texas Mexican Railway Company