

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2007-1464-MLM-E **TCEQ ID:** RN100213602 **CASE NO.:** 34643

**RESPONDENT NAME:** McCarty Road Landfill TX, LP

<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 checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" 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> McCarty Road Landfill TX, 11013 Old Beaumont Highway, Houston, Harris 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 July 7, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. John Shelton, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-2563; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Scott Trebus, Environmental Manager, McCarty Road Landfill TX, LP, 5757A Oates Road, Houston, Texas 77078                      Mr. Christopher R. Synek, Senior Vice President, McCarty Road Landfill TX, LP, 5757A Oates Road, Houston, Texas 77078  <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 11, 2006</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 30, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WASTE</b></p> <p>Failure to prevent the unloading and disposal of unauthorized industrial solid waste. Specifically, the Respondent accepted, unloaded and disposed of Class-1 non-hazardous industrial waste on July 20 and August 15, 2006 [30 TEX. ADMIN. CODE §§ 335.2(b) and 330.225(c)].</p>	<p><b>Total Assessed:</b> \$3,720</p> <p><b>Total Deferred:</b> \$744  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$2,976</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input 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>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on August 22, 2006, the Respondent implemented procedures to prevent the disposal of unauthorized Class-1 non-hazardous industrial waste at the Facility.</p>

Additional ID No(s): MSW Permit 261A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

**TCEQ**

DATES	Assigned	4-Sep-2007	Screening	17-Sep-2007	EPA Due	
	PCW	13-Sep-2007				

**RESPONDENT/FACILITY INFORMATION**

Respondent	McCarty Road Landfill TX, LP		
Reg. Ent. Ref. No.	RN100213602		
Facility/Site Region	12-Houston	Major/Minor Source	Major

**CASE INFORMATION**

Enf./Case ID No.	34643	No. of Violations	1
Docket No.	2007-1464-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	John Shelton
Multi-Media	Industrial and Hazardous Waste	EC's Team	Enforcement Team 7
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

## 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** 41% Enhancement Subtotals 2, 3, & 7

Notes: Enhancement is recommended based on one NOV with same or similar violations, eight with non-same or similar violations, and one Agreed Order.

**Culpability** No 0% Enhancement Subtotal 4

Notes:

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

	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.

**Total EB Amounts**  0% Enhancement\* Subtotal 6   
\*Capped at the Total EB \$ Amount  
**Approx. Cost of Compliance**

**SUM OF SUBTOTALS 1-7** Final Subtotal

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 32% Adjustment

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

Notes: Recommended adjustment to capture the avoided cost associated with the violation.

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL** 20% Reduction Adjustment

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

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY**

**Screening Date** 17-Sep-2007

**Docket No.** 2007-1464-MLM-E

**PCW**

**Respondent** McCarty Road Landfill TX, LP

Policy Revision 2 (September 2002)

**Case ID No.** 34643

PCW Revision June 26, 2007

**Reg. Ent. Reference No.** RN100213602

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** John Shelton

**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> )	1	5%
	Other written NOVs	8	16%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <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%

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)** 41%

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

No

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

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

Average Performer

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

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement is recommended based on one NOV with same or similar violations, eight with non-same or similar violations, and one Agreed Order.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 41%

**Screening Date** 17-Sep-2007 **Docket No.** 2007-1464-MLM-E **PCW**  
**Respondent** McCarty Road Landfill TX, LP *Policy Revision 2 (September 2002)*  
**Case ID No.** 34643 *PCW Revision June 26, 2007*

**Reg. Ent. Reference No.** RN100213602  
**Media [Statute]** Municipal Solid Waste  
**Enf. Coordinator** John Shelton

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**

**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

Release	Harm			Percent
	Major	Moderate	Minor	
OR Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text" value="10%"/>

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed protective levels as a result of the violation.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*  
 daily   
 monthly   
 quarterly   
 semiannual   
 annual   
 single event

**Violation Base Penalty**

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

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** McCarty Road Landfill TX, LP  
**Case ID No.** 34643  
**Reg. Ent. Reference No.** RN100213602  
**Media** Municipal Solid Waste  
**Violation No.** 1

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

Item Description	Item Cost	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	\$500	20-Jul-2006	22-Aug-2006	0.1	\$2	n/a	\$2
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 implement procedures to ensure Class-1 industrial waste is not disposed of in an unauthorized facility. The Date Required is the date of the first violation 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/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$900	20-Jul-2006	15-Aug-2006	0.0	\$0	\$900	\$900
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs**

Estimated cost to remove and properly dispose of the non-hazardous industrial waste. The Date Required is the date of the first violation and the Final Date is the date of last violation.

<b>Approx. Cost of Compliance</b>	\$1,400	<b>TOTAL</b>	\$902
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# Compliance History

Customer/Respondent/Owner-Operator:	CN601559222    McCarty Road Landfill TX, LP	Classification: Average	Rating: 5.91
Regulated Entity:	RN100213602    MCCARTY ROAD LANDFILL TX	Classification: Average	Site Rating: 1.95

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	HG08071
	AIR OPERATING PERMITS	PERMIT	1454
	MUNICIPAL SOLID WASTE	PERMIT	261A
	MUNICIPAL SOLID WASTE	PERMIT	261B
	PETROLEUM STORAGE TANK	REGISTRATION	49722
	REGISTRATION		
	WASTEWATER	PERMIT	WQ0004134000
	WASTEWATER	PERMIT	TPDES0119326
	WASTEWATER	PERMIT	TX0119326
	AIR NEW SOURCE PERMITS	REGISTRATION	72609
	AIR NEW SOURCE PERMITS	PERMIT	2584
	AIR NEW SOURCE PERMITS	PERMIT	25610
	AIR NEW SOURCE PERMITS	PERMIT	45878
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HG08071
	AIR NEW SOURCE PERMITS	AFS NUM	4820101505
	AIR NEW SOURCE PERMITS	REGISTRATION	81014
	AIR NEW SOURCE PERMITS	PERMIT	81014
	STORMWATER	PERMIT	TXR050074
	UNDERGROUND INJECTION	PERMIT	5X2600413
	CONTROL		

Location: 11013 Old Beaumont Highway, Houston Texas Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: September 05, 2007

Agency Decision Requiring Compliance Enforcement

Compliance Period: September 05, 2002 to September 05, 2007

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

Name: John Shelton Phone: (512) 239-2563

### Site Compliance History Components

- |   |     |
|---|-----|
| 1. Has the site been in existence and/or operation for the full five year                 | 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?  |     |

McCarty Road Landfill TX, LP

4. if Yes, who was/were the prior owner(s)?

5. When did the change(s) in ownership occur?

### 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	Effective Date: 09/21/2006	ADMINORDER 2005-1225-MSW-E
	Classification: Moderate	

Citation: 30 TAC Chapter 330, SubChapter F 330.114(5)[G]  
Rqmt Prov: Permit No. 261A, Section 4.2.6 OP

Description: Failed to follow procedures for the detection and prevention of disposal of prohibited waste, including polychlorinated biphenyl (PCB) waste.

Classification: Major

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

Rqmt Prov: Permit No. 261A, Section 4.2.5 OP

Description: Failed to prohibit the disposal of unauthorized oilfield waste. Specifically, oilfield waste above the authorized limits of 1500 ppm was disposed of at the facility.

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	10/10/2002	(234864)
2	11/18/2002	(234865)
3	12/16/2002	(327616)
4	01/02/2003	(19907)
5	01/03/2003	(16216)
6	01/15/2003	(234866)
7	03/06/2003	(25866)
8	03/11/2003	(234856)
9	04/11/2003	(234858)
10	04/15/2003	(31254)
11	06/16/2003	(327608)
12	06/16/2003	(327609)
13	06/16/2003	(327610)
14	07/24/2003	(327611)
15	08/25/2003	(327612)
16	09/16/2003	(327613)
17	10/21/2003	(327614)
18	11/18/2003	(327615)
19	12/19/2003	(327617)
20	01/08/2004	(254104)
21	01/15/2004	(327618)
22	02/18/2004	(262284)
23	02/24/2004	(367146)
24	02/24/2004	(258026)
25	03/10/2004	(262769)
26	06/29/2004	(276250)
27	08/18/2004	(367155)
28	09/17/2004	(367144)
29	09/17/2004	(367145)
30	09/17/2004	(367147)
31	09/17/2004	(367148)
32	09/17/2004	(367149)
33	09/17/2004	(367150)
34	09/17/2004	(367151)
35	09/17/2004	(367152)
36	09/17/2004	(367153)
37	09/17/2004	(367154)
38	09/17/2004	(367156)
39	09/17/2004	(367157)
40	09/17/2004	(367158)
41	10/19/2004	(367159)
42	11/12/2004	(390137)
43	12/29/2004	(342751)
44	12/30/2004	(390135)
45	12/30/2004	(390136)

46 12/30/2004 (390138)  
 47 01/25/2005 (390139)  
 48 02/16/2005 (427622)  
 49 03/28/2005 (390134)  
 50 04/13/2005 (427623)  
 51 05/31/2005 (377435)  
 52 06/09/2005 (427624)  
 53 07/15/2005 (447647)  
 54 07/15/2005 (447648)  
 55 08/08/2005 (397362)  
 56 09/12/2005 (431022)  
 57 09/30/2005 (447649)  
 58 10/26/2005 (492702)  
 59 11/28/2005 (492703)  
 60 12/27/2005 (492704)  
 61 01/27/2006 (492705)  
 62 02/16/2006 (451261)  
 63 02/21/2006 (492700)  
 64 03/30/2006 (492701)  
 65 05/02/2006 (506375)  
 66 06/27/2006 (506376)  
 67 06/28/2006 (506377)  
 68 07/25/2006 (482144)  
 69 08/30/2006 (528610)  
 70 09/18/2006 (512153)  
 71 09/27/2006 (528611)  
 72 10/16/2006 (511194)  
 73 10/26/2006 (517337)  
 74 10/27/2006 (551915)  
 75 11/03/2006 (509766)  
 76 11/09/2006 (518576)  
 77 12/08/2006 (551916)  
 78 12/29/2006 (551917)  
 79 02/23/2007 (589219)  
 80 03/27/2007 (589216)  
 81 03/27/2007 (589217)  
 82 06/07/2007 (589218)  
 83 08/29/2007 (573384)  
 84 08/30/2007 (573849)

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

Date 10/31/2002 (234865)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date 12/31/2002 (234866)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date 03/07/2003 (25866)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 111, SubChapter B 111.201  
 Description: Failure to conduct outdoor burning for fire extinguisher training so that the regulated entity met the exemption requirement found in 30 TAC Chapter 111.205(a) of providing the BAQC with 10 working days notice resulted in a violation of 30 TAC Chapter 111.201, for unauthorized outdoor burning.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 122, SubChapter F 122.503(a)(1)  
 Description: Failure to submit an application for a new authorization to operate to the TCEQ at a site where there is a change in any applicability determination or

the basis of any determination in the GOP application.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter F 122.503(a)(3)

Description: Failure to submit an application for a revised FOP to include a change in the permit identification of ownership or operational control of the site.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter F 122.503(c)(2)

Description: Failure to submit an application to the TCEQ for a change to the FOP before the change is operated.

Date 01/09/2004 (254104)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
40 CFR Chapter 60, SubChapter C, PT 60, SubPT WWW 60.755(a)(3)

Rqmt Prov: OP 517, Condition (c), Table 20

Description: Failure to expand the gas collection system within 120 days of measuring an exceedance in gauge pressure at an extraction well after failing to achieve negative pressure at the gas extraction well within 15 days of measuring the exceedance.

Date 05/31/2004 (367151)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: TWC Chapter 26 26.121(a)[G]  
Failure to meet the limit for one or more permit parameter

Date 06/29/2004 (276250)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)

Description: McCarty is permitted to take asbestos containing material (ACM). Because the ACM is recognized as a Class 1 waste; the facility is required to have and maintain a Notice of Registration (NOR). A review of the NOR (Attachment 3) indicates the presence of inaccurate information.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 330, SubChapter F 330.117(c)

Description: McCarty received, from Oxyvinyl, waste contaminated with PCBs above regulatory levels from June 1998 to November 2003. McCarty received a shipment of TPH waste above regulatory limits from Albemarle in November 2003.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 330, SubChapter F 330.130

Description: Since 1994 exceedances have been reported at probes M, O, P, Q, R, S, T1, and T5. The facility is required to report these exceedances and other quarterly data to both the TCEQ Central Office and the Regional Office. This information has not been reported since August 16, 2001.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter K 330.281(b)

Description: During the investigation on March 25, 2003 the facility provided a copy of financial assurance which had a effective date of April 1, 2003. A subsequent call to the financial assurance section of the TCEQ on April 8, 2004, indicated that the TCEQ had not received an revised document as required.

Date 02/28/2007 (589217)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date 03/31/2007 (528610)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date 04/30/2007 (589218)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter

- 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  
MCCARTY ROAD LANDFILL TX, LP  
RN100213602**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-1464-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 McCarty Road Landfill TX, LP ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent operates a municipal solid waste landfill at 11013 Old Beaumont Highway in Houston, Harris County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal and industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and McCarty Road Landfill agree that the Commission has jurisdiction to enter this Agreed Order, and that McCarty Road Landfill is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 4, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Seven Hundred Twenty Dollars (\$3,720) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Nine Hundred Seventy-Six Dollars (\$2,976) of the administrative penalty and Seven Hundred Forty-Four Dollars (\$744) is deferred



contingent upon the Respondent'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 the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent 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 the Respondent 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 on August 22, 2006, the Respondent implemented procedures to prevent the disposal of unauthorized Class-1 non-hazardous industrial waste at 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 the Respondent 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**

As owner and operator of the Facility, the Respondent is alleged to have failed to prevent the unloading and disposal of unauthorized industrial solid waste, in violation of 30 TEX. ADMIN. CODE §§ 335.2(b) and 330.225(c), as documented during an investigation conducted on October 11, 2006. Specifically, the Respondent accepted, unloaded and disposed of Class-1 non-hazardous industrial waste on July 20 and August 15, 2006.

## **III. DENIALS**

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



#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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: McCarty Road Landfill TX, LP, Docket No. 2007-1464-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. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent 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), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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 S. Miller  
\_\_\_\_\_  
For the Executive Director

8/25/2008  
\_\_\_\_\_  
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 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- 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;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Christopher R. Synek  
\_\_\_\_\_  
Signature

APRIL 11, 2008  
\_\_\_\_\_  
Date

CHRISTOPHER R. SYNEK  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
McCarty Road Landfill TX, LP

SENIOR VICE PRESIDENT  
\_\_\_\_\_  
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.

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