

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 1999-1482-MSW-E TCEQ ID NO: RN103045860 CASE NO.: 14329
RESPONDENT NAME: BRAZOSPORT EQUIPMENT & RENTAL, INC.

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: Approximately 0.9 miles southeast of the intersection of Farm-to-Market Road 523 and State Highway 332, Oyster Creek, Brazoria County</p> <p>TYPE OF OPERATION: Municipal solid waste site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input 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 _____. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Robert Mosley, Litigation Division, MC 175, (512) 239-0627 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Rebecca Clausewitz, Enforcement Division, Section II, MC R-13, (210) 403-4012 TCEQ Regional Contact: Ms. Billie Zaportez, Houston Regional Office, MC R-12, (713) 767-3634 Respondent: Mr. Jay Meyer, President, Brazosport Equipment and Rental Inc., P.O. Box 311, Clute, Texas 77531 Respondent's Attorney: Mr. J.D. Head, Fritz, Byrne, Head & Harrison, L.L.P., 98 San Jacinto Boulevard, Suite 2000, Austin, Texas 78701</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: February 12, 1999</p> <p>Dates of Investigation Relating to this Case: March 12, 1999 and April 9, 2003</p> <p>Date of NOE Relating to this Case: November 4, 1999 and March 26, 1999</p> <p>Background Facts: The Houston Regional Office received several complaints on February 12, 1999, regarding illegal dumping, including a complaint concerning violations at this site. An investigation was conducted on March 12, 1999. The Enforcement Division sent a settlement offer to the Respondent on January 20, 2000. The Respondent replied on February 16, 2000, requesting that the case be referred to the County because they believed that other dumping cases were handled by the County. The TNRCC responded on February 29th that the County referred the case to the Agency to take the lead. The settlement offer was withdrawn on March 31, 2000.</p> <p>On January 24, 2001, the Litigation Division attorney requested that the case be referred to the State Office of Administrative Hearings ("SOAH"). On March 29, 2001, the preliminary hearing was held at SOAH. The Litigation Division attorney filed discovery requests on April 30, 2001. The Respondent's attorney withdrew from representation on May 3rd.</p> <p>The Respondent sent its discovery responses on May 31, 2001, and on June 1, 2001, the staff attorney mailed discovery responses to the Respondent. On June 6, 2001, the Respondent provided a deed to the property showing that the ownership of the property was transferred from the Respondent to Dow Chemical Company. The staff attorney e-mailed the Enforcement Coordinator and the region with a proposal to remove the corrective actions from the proposed order and enter into a settlement agreement based on the refusal of the property lessor to allow the Respondent onto the property.</p>	<p>Total Assessed: \$5,500</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$5,500</p> <p>The Respondent has paid the administrative penalty in full.</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input 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: January 1999</p>	<p>Ordering Provisions</p> <p>No technical requirements are necessary because the regional staff, enforcement division staff, and litigation division staff, reviewed the potential threats to human health and the environment and do not believe that the benefit of having the remaining land clearing debris removed from the site is necessary to protect human health or the environment. Further, there is no specific evidence in this case that suggests that the land clearing debris poses a threat to human health or the environment. Staff believes that removal would be more detrimental to existing habitats than leaving the waste on-site.</p>

After receiving the signed Agreed Order and check from the Respondent, a motion to non-suit was filed with SOAH on July 16, 2001, which was granted on July 18th. In September 2001, the staff attorney provided Dow with information regarding the enforcement case and discussed compliance issues with Dow's attorney. The staff attorney requested an affidavit from Dow stating that it would allow access to the Respondent onto the property to conduct corrective actions. Dow agreed to provide the affidavit, and the Respondent's consultant was contacted to notify him that the Agreed Order would not be presented to the Commission without the corrective actions. The case was remanded from the Commissioner's Agenda on September 25, 2001, for further negotiation with the Respondent.

On November 25, 2002, the regional staff agreed to conduct an additional investigation at the facility. The investigation was conducted in April. On November 6, 2003, the EDPRP was re-filed with the corrective action requirements. The Respondent received notice of the EDPRP, based on the signature of the green card, on November 13, 2003, but did not respond. The Respondent and its consultant did not subsequently respond to the EDPRP or contact the Litigation Division attorney, and a default order was set on the April 28, 2004 agenda. The Respondent hired an attorney and asked that the case be remanded so that negotiations for an Agreed Order could continue. The Commission remanded the case back to the Executive Director. After reviewing the case with regional staff and enforcement staff, the corrective actions were removed from the Agreed Order due to the specific facts of this case not justifying the disturbance of the site where the land clearing debris was deposited, and not being necessary to protect human health or the environment.

A signed Agreed Order was received.

The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.

MSW:

Failed to obtain authorization for disposing of municipal solid waste [30 TEX. ADMIN. CODE § 330.5(c)].



TNRCC

Penalty Calculation Worksheet

Plcy. rev. 1 (SB 1876)

PCW rev. 11/22/1999

Go to VL 1

Case Information

Screening Date	4-Nov-1999	format: 4/23/97	Case Priority Due Date	3-Mar-2000
PCW Date	25-Apr-2000	format: 4/23/97	EPA SNC/SV Due Date	
Respondent	Brazosport Equipment & Rental, Inc.			
ID Number(s)	Unauthorized MSW Site Number 455120017; Enf. ID No.14329			
Docket Number	1999-1482-MSW-E		Facility/Site Region	12-Houston
Enf. Coordinator	Rebecca Clausewitz		EC's Unit or Region	Sec.II Team D
Type of Order	Findings		No. of Violations in PCW	1
Case Priority	3		Enter x for Major Source (as defined in PP)	

Media-Program

x	Program Name(s)	Min	Max
x	Municipal Solid Waste	\$0	\$10,000
	Water Rights	\$0	\$5,000
		\$0	\$2,500
	Public Water Supply	\$50	\$1,000
	Levees	\$0	\$1,000
	Public Water Utilities	\$0	\$500

Adjustments to Subtotal 1

Total Base Penalty forward (subtotal 1) \$5,000

Culpability (enhancement)

Does the respondent meet any of the culpability criteria? Yes No

Notes: Respondent has no prior NOVs for the same or similar type of violation and no other documentation exists which indicates culpability.

Adjustment amount (subtotal 2) \$0

Economic Benefit (enhancement)

Total of EB Amounts \$118,767
 EB Enhancement (percent) 10%
 Adjustment amount (subtotal 5) \$500
 Approx. Cost of Compliance \$149,000

Good Faith Effort to Comply (reduction)

Timing of Action

Quality of Action Before NOV NOV to EDPRP or Order
 Extraordinary Percent
 Ordinary 0%
 None of the above (mark only one; use small x)

Notes: The violation involves a past event with no opportunity for future compliance.

Adjustment amount (subtotal 3) \$0

Compliance History (enhancement)

Enter Percent 0 (enter number only; e.g., 30 for 30%)

Notes: There is no record of findings orders, judicial actions, or criminal convictions.

Adjustment amount (subtotal 4) \$0

Final Subtotal \$5,500

Other Factors as justice may require

Enter Adjustment Percentage (+/-) 0% (enter number only; e.g., -30 for -30%)

Notes: (if more space is needed, increase row height)

Amount \$0

Final Penalty Amount \$5,500

Final Assessed Penalty (including any statutory limit adj.) \$5,500

Payable Penalty

Enter Deferral Percentage 0% (enter number only; e.g., 20 for 20%) Deferral \$0

Notes: Deferral is no longer recommended because timely settlement was not achieved.

Payable Penalty \$5,500

Screening Date	04-Nov-99	Docket Number	1999-1482-MSW-E	PCW
Respondent	Brazosport Equipment & Rental, Inc.			Plcy. rev. 1 (SB 1876)
ID Number(s)	Unauthorized MSW Site Number 455120017; Enf. ID No.14329			PCW rev. 11/22/1999
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Rebecca Clausewitz			
Violation Number	1			
Primary Rule Cite	30 Tex. Admin. Code § 330.5 (c)			
Secondary Cite(s)				
Violation Description	Unauthorized disposal of 15,000 cubic yards of municipal solid waste.			

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix				
	Harm			
	Major	Moderate	Minor	
Release				
Actual			x	
Potential				
OR				Percent 10%

» Programmatic Matrix				
	Major	Moderate	Minor	
Falsification				Percent
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.			
				Adjustment -\$9,000
				Base Penalty Subtotal \$1,000

Violation Events				
Number of Violation Events	5			

<i>mark only one; use small x</i>	daily		
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		
			Violation Base Penalty \$5,000

Events Notes	Five quarterly events are recommended for the time frame from the initial inspection date, March 12, 1999, to the end of the 60-day settlement period, March 20, 2000.
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Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount (\$) \$118,767	Violation Final Penalty total \$5,500
This Violation Final Assessed Penalty (adjusted for limits) \$5,500	

Economic Benefit Worksheet

Respondent: Brazosport Equipment & Rental, Inc.
ID Number(s): Unauthorized MSW Site Number 455120017; Enf. ID No.14329
Media [Statute]: Municipal Solid Waste
Violation Number: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas</small>	Date Required <small>00/00/00</small>	Final Date <small>00/00/00</small>	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$44,000	12-Mar-1999	4-Sep-2000	1.5	\$3,267	n/a	\$3,267
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated delayed cost of remediation for the time frame from the date of the inspection, to the estimated date of compliance. The delayed costs include the following: labor & equipment (\$5,000); transportation (\$11,000); and, disposal (\$28,000) of 7,000 cubic yards of municipal solid waste.

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]	\$105,000	12-Apr-1999	4-Sep-2000	2.0	\$10,500	\$105,000	\$115,500
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for not disposing of 15,000 cubic yards of municipal solid waste @ \$7 per cubic yard for the time period from the date of inspection to the estimated date of compliance.

Approx Cost of Compliance \$149,000

TOTAL \$118,767

Compliance History

Customer/Respondent/Owner-Operator:	CN601585615 Brazosport Equipment & Rental, Inc.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN103045860 BRAZOSPORT EQUIPMENT AND RENTAL INC	Classification: HIGH	Site Rating: 0.00
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED NUMBER		455120017
Location:	Sills Propety 0.9 Mi from Intersection of FM 523 and St Hwy 332 near Oyster Creek TX 77531	Rating Date: September 01 07	Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	February 28, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 01, 2002 to August 31, 2007		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Phone:		

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

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 06/27/2003 (112937)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF
AN ENFORCEMENT ACTION
AGAINST BRAZOSPORT
EQUIPMENT & RENTAL, INC.
TCEQ UNAUTHORIZED MSW
SITE NO. 455120017; RN103045860

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 1999-1482-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 Brazosport Equipment & Rental, Inc. ("Brazosport") 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 Brazosport represented by J. D. Head of the law firm of Fritz, Byrne, Head & Harrison, L.L.P., appear before the Commission and together stipulate that:

1. At the time of the violations, Brazosport operated an unauthorized municipal solid waste site located approximately 0.9 miles southeast of the intersection of Farm-to-Market Road 523 and State Highway 332 in Oyster Creek, Brazoria County, Texas (the "Site").
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.
3. The Commission and Brazosport agree that the Commission has jurisdiction to enter this Agreed Order, and that Brazosport is subject to the Commission's jurisdiction.
4. Brazosport received notice of the violations alleged in Section II ("Allegations") on or about November 9, 1999.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Brazosport of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of five thousand five hundred dollars (\$5,500.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Brazosport has paid five thousand five hundred dollars (\$5,500.00) 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 Brazosport 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 Brazosport 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 of 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

Brazosport, as operator of the Facility, is alleged to have violated 30 TEX. ADMIN. CODE § 330.5(c) by failing to obtain authorization for disposing of municipal solid waste.

III. DENIALS

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

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Brazosport pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and Brazosport's compliance with all of 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 requiring corrective action or penalties for violations which are not raised here.

2. The provisions of this Agreed Order shall apply to and be binding upon Brazosport. Brazosport is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Brazosport 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 Brazosport, or three days after the date on which the Commission mails notice of the Order to Brazosport, 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

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.

Jay Meyer
Signature

8-23-04
Date

Jay Meyer
Mr. Jay Meyer, President
Brazosport Equipment and Rental, Inc.

President
Title

Stephanie Beyerson

4/9/08

8/8

~~Lydia Gonzalez-Gromatzky~~ Stephanie Beyerson Date
Deputy Director
Office of Legal Services
Texas Commission on Environmental Quality
Perdue