

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2008-1000-MSW-E **TCEQ ID:** RN105373294 **CASE NO.:** 36072**RESPONDENT NAME:** COWTOWN REDI MIX, 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: COW TOWN REDI MIX, 12844 Calloway Cemetery Road, Euless, Tarrant County</p> <p>TYPE OF OPERATION: Concrete batch facility</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 November 17, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. John Shelton, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-2563; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Sam Shmaisani, Registered Agent/Secretary, COWTOWN REDI MIX, INC., P.O. Box 162327, Fort Worth, Texas 76161 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 28, 2008</p> <p>Date of NOV/NOE Relating to this Case: May 13, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to prevent disturbing the final cover of a closed municipal solid waste ("MSW") landfill. Specifically, twelve 40 foot long piers have been installed beneath the Facility and have penetrated the cover of the closed MSW landfill [30 TEX. ADMIN. CODE § 330.954(e)(1) and (2)].</p> <p>2) Failure to prevent the ponding of water over a closed MSW landfill. Specifically, an area of ponded water at the Facility was observed to be located over the closed MSW landfill [30 TEX. ADMIN. CODE § 330.961(d)].</p> <p>3) Failure to ensure conduits transporting fluids over a closed MSW landfill are double-walled. Specifically, the water line connected to the office trailer located over the closed MSW landfill at the Facility was not double-walled [30 TEX. ADMIN. CODE § 330.961(g)].</p>	<p>Total Assessed: \$3,000</p> <p>Total Deferred: \$600 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,400</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>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Remove all ponded water on the area over the closed MSW landfill and fill in the area in which the ponding occurred; and</p> <p>ii. Submit an administratively complete registration application for existing structures built over closed MSW landfills.</p> <p>b. Within 45 days after the effective date of this Agreed Order, ensure that conduits transporting fluids over the closed MSW landfill are double-walled;</p> <p>c. Respond completely and adequately, as determined by the TCEQ, to all letter requests for information concerning the registration application within 30 days after the date of such letters, or by any other deadline specified in writing; and</p> <p>d. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a.i. through c.</p>

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	16-May-2008			
	PCW	19-Jun-2008	Screening	18-Jun-2008	EPA Due

RESPONDENT/FACILITY INFORMATION			
Respondent	COWTOWN REDI MIX, INC.		
Reg. Ent. Ref. No.	RN105373294		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36072	No. of Violations	3
Docket No.	2008-1000-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Colin Barth
		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)	<i>Subtotal 1</i>	\$3,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$0
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Notes: The Respondent has no record of any previous NOVs or Orders at this site in the past five years.

Culpability	No	0.0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	<i>Subtotal 5</i>	\$0
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Economic Benefit	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
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Total EB Amounts: \$1,943
 Approx. Cost of Compliance: \$7,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$3,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$3,000
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$3,000
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DEFERRAL	20.0%	Reduction	<i>Adjustment</i>	-\$600
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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	\$2,400
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Screening Date	18-Jun-2008	Docket No.	2008-1000-MSW-E	PCW
Respondent	COWTOWN REDI MIX, INC.			Policy Revision 2 (September 2002)
Case ID No.	36072			PCW Revision June 12, 2008
Reg. Ent. Reference No.	RN105373294			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Colin Barth			

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%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

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

The Respondent has no record of any previous NOVs or Orders at this site in the past five years.

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

Screening Date 18-Jun-2008	Docket No. 2008-1000-MSW-E	PCW
Respondent COWTOWN REDI MIX, INC.	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 36072	<i>PCW Revision June 12, 2008</i>	
Reg. Ent. Reference No. RN105373294		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Colin Barth		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code § 330.954(e)(1) and (2)	
Violation Description	Failed to prevent disturbing the final cover of a closed municipal solid waste ("MSW") landfill, as documented during an investigation conducted April 28, 2008. Specifically, twelve 40 foot long piers have been installed beneath the facility and have penetrated the cover of the closed landfill.	
Base Penalty	<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix		
OR	Harm	
	Release Major Moderate Minor	
	Actual <input type="text"/>	Percent <input type="text" value="0%"/>
	Potential <input type="text"/>	
>> Programmatic Matrix		
	Falsification Major Moderate Minor	
	<input type="text"/> <input checked="" type="checkbox"/> <input type="text"/> <input type="text"/>	Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.	
Adjustment	<input type="text" value="\$9,000"/>	
<input type="text" value="\$1,000"/>		
Violation Events		
Number of Violation Events	<input type="text" value="2"/>	Number of violation days <input type="text" value="51"/>
<i>mark only one with an x</i>	daily <input type="text"/>	Violation Base Penalty <input type="text" value="\$2,000"/>
	monthly <input checked="" type="checkbox"/>	
	quarterly <input type="text"/>	
	semiannual <input type="text"/>	
	annual <input type="text"/>	
	single event <input type="text"/>	
Two monthly events are recommended from the investigation date of April 28, 2008 to the screening date of June 18, 2008.		
Good Faith Efforts to Comply		
	0.0% Reduction	<input type="text" value="\$0"/>
	Before NOV NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	
Ordinary	<input type="text"/>	
N/A	<input checked="" type="checkbox"/> (mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.	
Violation Subtotal	<input type="text" value="\$2,000"/>	
Economic Benefit (EB) for this violation		
Statutory Limit Test		
Estimated EB Amount	<input type="text" value="\$1,816"/>	Violation Final Penalty Total <input type="text" value="\$2,000"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,000"/>		

Economic Benefit Worksheet

Respondent COWTOWN REDI MIX, INC.
 Case ID No. 36072
 Reg. Ent. Reference No. RN105373294
 Media Municipal Solid Waste
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	23-Jan-2001	28-Apr-2008	7.27	\$1,816	n/a	\$1,816

Notes for DELAYED costs

Estimated cost to submit an administratively complete application for existing structures built over closed MSW landfills. The Date Required is the date in which construction began and Final Date is the investigation date.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$1,816

Screening Date 18-Jun-2008	Docket No. 2008-1000-MSW-E	PCW
Respondent COWTOWN REDI MIX, INC.	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 36072	<small>PCW Revision June 12, 2008</small>	
Reg. Ent. Reference No. RN105373294		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Colin Barth		

Violation Number	2
Rule Cite(s)	30 Tex. Admin. Code § 330.961(d)
Violation Description	Failed to prevent the ponding of water over a closed MSW landfill, as documented during an investigation conducted April 28, 2008. Specifically, an area of ponded water was observed over the closed MSW landfill.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text" value="X"/>	<input type="text"/>	
				Percent <input style="width: 50px;" type="text" value="5%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input style="width: 50px;" type="text" value="0%"/>

Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants as a result of this violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text" value="X"/>

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="X"/>	<input type="text" value="(mark with x)"/>

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal

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: COWTOWN REDI MIX, INC.
Case ID No.: 36072
Reg. Ent. Reference No.: RN10573294
Media: Municipal Solid Waste
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	28-Apr-2008	4-Mar-2009	0.85	\$42	n/a	\$42

Notes for DELAYED costs

Estimated cost to prevent water from ponding over closed MSW landfill. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$42

Screening Date 18-Jun-2008	Docket No. 2008-1000-MSW-E	PCW		
Respondent COWTOWN REDI MIX, INC.	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36072	<i>PCW Revision June 12, 2008</i>			
Reg. Ent. Reference No. RN105373294				
Media [Statute] Municipal Solid Waste				
Enf. Coordinator Colin Barth				
Violation Number <input type="text" value="3"/>				
Rule Cite(s)	30 Tex. Admin. Code § 330.961(g)			
Violation Description	Failed to ensure conduits transporting fluids over a closed MSW landfill are double-walled, as documented during an investigation conducted April 28, 2008. Specifically, the water line connected to the office trailer located over the closed MSW landfill at the facility was not double-walled.			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			Percent <input type="text" value="5%"/>
	Release	Major	Moderate	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="0%"/>
Matrix Notes	Human health or the environment will or could be exposed to insignificant amounts of pollutants as a result of this violation.			
Adjustment		<input type="text" value="\$9,500"/>		
		<input type="text" value="\$500"/>		
Violation Events				
Number of Violation Events <input type="text" value="1"/>		Number of violation days <input type="text" value="51"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text" value="x"/>		
Violation Base Penalty		<input type="text" value="\$500"/>		
One single event is recommended.				
Good Faith Efforts to Comply		0.0% Reduction		<input type="text" value="\$0"/>
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>			
Ordinary	<input type="text"/>			
N/A	<input type="text" value="x"/>	(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal		<input type="text" value="\$500"/>		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount <input type="text" value="\$89"/>		Violation Final Penalty Total <input type="text" value="\$500"/>		
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$500"/>		

Economic Benefit Worksheet

Respondent: COWTOWN REDI MIX, INC.
Case ID No.: 36072
Reg. Ent. Reference No.: RN105373294
Media: Municipal Solid Waste
Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment	\$1,500	28-Apr-2008	4-Mar-2009	0.85	\$4	\$85	\$89
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to ensure that piping located over the closed MSW landfill is double-walled. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$89

Compliance History

Customer/Respondent/Owner-Operator: CN602718157 Cowtown Redi Mix, Inc. Classification: AVERAGE Rating: 2.00
Regulated Entity: RN105373294 COW TOWN REDI MIX Classification: AVERAGE BY Site Rating: 3.01
ID Number(s):
Location: 12844 CALLOWAY CEMETERY, EULESS Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: June 26, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 26, 2003 to June 26, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Colin Barth Phone: 512 239 0086

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 05/14/2008 (614687)
 - 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
CONCERNING
COWTOWN REDI MIX, INC.
RN105373294

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2008-1000-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 COWTOWN REDI MIX, INC. ("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 concrete batch facility at 12844 Calloway Cemetery Road in Euless, Tarrant County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 18, 2008.
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 Dollars (\$3,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Four Hundred Dollars (\$2,400) of the administrative penalty and Six Hundred Dollars (\$600) 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 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.
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 operator of the Facility, the Respondent is alleged to have:

1. Failed to prevent disturbing the final cover of a closed MSW landfill, in violation of 30 TEX. ADMIN. CODE § 330.954(e)(1) and (2), as documented during an investigation conducted April 28, 2008. Specifically, twelve 40 foot long piers have been installed beneath the Facility and have penetrated the cover of the closed MSW landfill.
2. Failed to prevent the ponding of water over a closed MSW landfill, in violation of 30 TEX. ADMIN. CODE § 330.961(d), as documented during an investigation conducted April 28, 2008. Specifically, an area of ponded water at the Facility was observed to be located over the closed MSW landfill.
3. Failed to ensure conduits transporting fluids over a closed MSW landfill are double-walled, in violation of 30 TEX. ADMIN. CODE § 330.961(g), as documented during an investigation conducted April 28, 2008. Specifically, the water line connected to the office trailer located over the closed MSW landfill at the Facility was not double-walled.

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: COWTOWN REDI MIX, INC., Docket No. 2008-1000-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. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Remove all ponded water on the area over the closed MSW landfill and fill in the area in which the ponding occurred, in accordance with 30 TEX. ADMIN. CODE § 330.961(d);
 - ii. Submit an administratively complete registration application for existing structures built over closed MSW landfills, in accordance with 30 TEX. ADMIN. CODE § 330.959;
 - b. Within 45 days after the effective date of this Agreed Order, ensure that conduits transporting fluids over the closed MSW landfill are double-walled, in accordance with 30 TEX. ADMIN. CODE § 330.961(g);
 - c. Respond completely and adequately, as determined by the TCEQ, to all letter requests for information concerning the registration application within 30 days after the date of such letters, or by any other deadline specified in writing; and
 - d. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.c.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

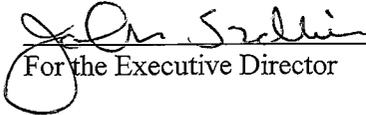
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any 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 Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against 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.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to 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



For the Executive Director

~~8/26/08~~ 10/16/2008

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.

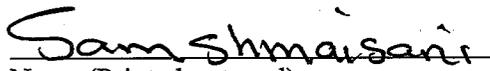
In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

8/26/08

Date



Name (Printed or typed)
Authorized Representative of
COWTOWN REDI MIX, INC.

Secretary

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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