

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-1141-MSW-E TCEQ ID: RN100869254 CASE NO.: 25476
RESPONDENT NAME: P JOHNSTON VENTURES, INC.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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: 860 Rayford Road, Montgomery County</p> <p>TYPE OF OPERATION: Unauthorized 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.</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 22, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Alfred. Oloko, Litigation Division, MC R-12, (713) 422-8918 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Bryan Elliott, Air Enforcement Section, MC 149, (512) 239-6162 TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623 Respondent: Ms. Phyllis A. Johnston, President, P Johnston Ventures, Inc., 860 Rayford Road, Spring, Texas 77386 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:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 17, 2005</p> <p>Date of NOE Relating to this Case: April 15, 2005</p> <p>Background Facts: The EDPRP in this case was filed on April 21, 2006. An Amended Petition was filed on January 29, 2006, after it was discovered that the Respondent had changed its name. The ED filed a second Amended Petition to reinstate the reduction for High Performer Compliance History classification under "Other Factors as Justice May Require" criterion. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that the Respondent received notice of the EDSARP. The Respondent has not filed an answer to this enforcement action hence this default.</p> <p>MSW:</p> <p>Caused, suffered, allowed or permitted the dumping or disposal of municipal solid waste with out the written authorization of the Commission [30 TEX. ADMIN. CODE § 330.5(c)].</p>	<p>Total Assessed: \$7,875</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$7,875</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</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: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease to cause, suffer, allow, or permit any additional municipal solid waste to be stored, processed, removed or disposed of at this Site. 2. Within 15 days, submit written certification of compliance with Ordering Provision No. 1. 3. Within 60 days, ensure that all unauthorized waste at this Site is properly disposed of at an authorized facility. 4. Within 75 days, submit written certification of compliance with Ordering Provision No. 3, including documentation of the dates and quantity of waste that was removed from the Site and copies of receipts from the permitted landfill or approved facility that received the waste.

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Penalty Calculation Worksheet (PCW)



Policy Revision 2 (September 2002)

PCW Revision May 10, 2005

DATES	Assigned	18-Apr-2005		
	PCW	28-Jan-2008	Screening	29-Apr-2005
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	P Johnston Ventures, Inc.
Reg. Ent. Ref. No.	RN100869254
Facility/Site Region	12-Houston
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	25476	No. of Violations	1
Docket No.	2005-1141-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Dana Shuler
Multi-Media		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 -5% Enhancement Subtotals 2, 3, & 7

Notes: Reduction based on High Performer Classification and also an enhancement for a Notice of Violation letter dated November 10, 2004 for same or similar violations.

Culpability No Subtotal 4

Notes: The Respondent does not meet culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes: The respondent has not yet achieved compliance.

Economic Benefit 0% Enhancement* Subtotal 6

Total EB Amounts	\$4,336	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$50,000	

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE 11% Enhancement Adjustment

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

Notes: Enhancement for default order to recapture reduction given as High Performer Classification.

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL 0% Reduction Adjustment

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

Notes: No deferral recommended as this is not an expedited case.

PAYABLE PENALTY

Screening Date

29-Apr-2005

Docket No. 2005-1141-MSW-E

PCW

Respondent P Johnston Ventures, Inc.

Policy Revision 2 (September 2002)

Case ID No. 25476

PCW Revision May 10, 2005

Reg. Ent. Reference No. RN100869254

Media [Statute] Municipal Solid Waste

Enf. Coordinator Dana Shuler

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 (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
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%

Please Enter Yes or No

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction based on High Performer Classification and also an enhancement for a Notice of Violation letter dated November 10, 2004 for same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -5%

Screening Date

Inc\EDS\RP\2005-1141-msw-e-gcp-johnston\1-28-08_ds.qpw
29-Apr-2005

Docket No. 2005-1141-MSW-E

PCW

Respondent P Johnston Ventures, Inc.

Policy Revision 2 (September 2002)

Case ID No. 25476

PCW Revision May 10, 2005

Reg. Ent. Reference No. RN100869254

Media [Statute] Municipal Solid Waste

Enf. Coordinator Dana Shuler

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Allowing dumping of municipal solid waste without the written authorization of the commission. As documented during a February 17, 2005 follow-up investigation, there were approximately four acres of wood/brush debris present at the site located at 860 Rayford Road, Montgomery County, Texas. Additionally, asphalt shingles, construction or demolition debris, concrete, asphalt and brick were observed at the site.

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

The unauthorized disposal of waste has exposed the environment to significant amounts of pollutants which would not exceed protective levels for environmental receptors.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	X
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text"/>	

Violation Base Penalty

Three quarterly events are recommended, from the investigation date of February 17, 2005 to the end of the expedited settlement period (September 20, 2005).

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 P Johnston Ventures, Inc.
 Case ID No. 25476
 Reg. Ent. Reference No. RN100869254
 Media [Statute] 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
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	\$50,000	05-Oct-2004	30-Jun-2006	1.7	\$4,336	n/a	\$4,336
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of unauthorized waste at an authorized facility, from the investigation date when the violation was discovered through the estimated 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]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$50,000**

TOTAL \$4,336

Compliance History

Customer/Respondent/Owner-Operator: CN600545651 P Johnston Ventures, Inc. Classification: HIGH Rating: 0.000
Regulated Entity: RN100869254 P JOHNSTON VENTURES INC Classification: HIGH Site Rating: 0.00
ID Number(s): MUNICIPAL SOLID WASTE NON ID NUMBER 455120104
PERMITTED
AIR NEW SOURCE PERMITS ACCOUNT NUMBER MQ0637Q
Location: 860 RAYFORD RD, MONTGOMERY COUNTY Rating Date: 9/1/04 Repeat Violator: NO
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: June 9, 2005
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 09, 2000 to June 09, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Brian Lehmkuhle Phone: (512) 239-4482

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
6. Comments:

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.)

2 10/23/2000 (108505)
4 11/10/2004 (340576)
6 04/15/2005 (377432)

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

Date: 11/10/2004 (340576)

Self Report? NO

Citation:

30 TAC Chapter 330, SubChapter A 330.5(c)

Classification: Moderate

Description: Failure to appropriately dispose of cut trees/brush and to prevent unauthorized disposal of this waste.

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
P JOHNSTON VENTURES, INC.,
RN100869254

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2005-1141-MSW-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Second Amended Report and Petition filed pursuant to TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is P Johnston Ventures, Inc.¹ ("P Johnston Ventures").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. P Johnston Ventures owns and operates an unauthorized municipal solid waste site located at 860 Rayford Road, Montgomery County, Texas (the "Site").
2. The Site involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection on February 17, 2005, a TCEQ Houston Regional Office investigator documented that P Johnston Ventures caused, suffered, allowed or permitted the dumping or disposal of municipal solid waste without the written authorization of the Commission. Specifically, the investigator observed wood/brush debris, asphalt shingles, construction or demolition debris, concrete, asphalt, and brick at the Site.
4. P Johnston Ventures received notice of the violation on or about April 20, 2005.

¹ Effective September 8, 2006, Johnston Ventures, Inc. changed its name to P Johnston Ventures, Inc.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Johnston Ventures, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on April 21, 2006.
6. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of P Johnston Ventures, Inc." (the "EDFARP") in the TCEQ Chief Clerk's office on January 29, 2008.
7. By letter dated January 29, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served P Johnston Ventures with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that P Johnston Ventures received notice of the EDFARP.
8. More than 20 days have elapsed since P Johnston Ventures received notice of the EDFARP, provided by the Executive Director. P Johnston Ventures failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.
9. The Executive Director filed the "Executive Director's Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of P Johnston Ventures, Inc." (the "EDSARP") in the TCEQ Chief Clerk's office on June 26, 2008.
10. By letter dated June 26, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served P Johnston Ventures with notice of the EDSARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that P Johnston Ventures received notice of the EDSARP.
11. More than 20 days have elapsed since P Johnston Ventures received notice of the EDSARP, provided by the Executive Director. P Johnston Ventures failed to file an answer to the EDSARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, P Johnston Ventures is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, P Johnston Ventures caused, suffered, allowed or permitted the dumping or disposal of municipal solid waste without the written authorization of the Commission in violation of 30 TEX. ADMIN. CODE § 330.5(c)². Specifically, the investigator observed wood/brush debris, asphalt shingles, construction or demolition debris, concrete, asphalt, and brick at the Site.
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served P Johnston Ventures with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 8, P Johnston Ventures has failed to file a timely answer to the EDFARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against P Johnston Ventures and assess the penalty recommended by the Executive Director.
5. As evidenced by Finding of Fact Nos. 9 and 10, the Executive Director has timely served P Johnston Ventures with proper notice of the EDSARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
6. As evidenced by Finding of Fact No. 11, P Johnston Ventures has failed to file a timely answer to the EDSARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against P Johnston Ventures and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against P Johnston Ventures for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of

² The provisions of 30 TEX. ADMIN. CODE § 330.5(c) were recodified effective March 27, 2006, and can now be found in 30 TEX. ADMIN. CODE § 330.15(c).

rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

8. An administrative penalty in the amount of seven thousand eight hundred seventy-five dollars (\$7,875.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. P Johnston Ventures is assessed an administrative penalty in the amount of seven thousand eight hundred seventy-five dollars (\$7,875.00) for violation of TEX. HEALTH & SAFETY CODE ch. 361 and rules of the TCEQ. The payment of this administrative penalty and P Johnston Ventures' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: P Johnston Ventures, Inc.; Docket No. 2005-1141-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. P Johnston Ventures shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, P Johnston Ventures shall cease to cause, suffer, allow, or permit any additional municipal solid waste to be stored, processed, removed or disposed of at this Site in violation of 30 TEX. ADMIN. CODE § 330.5.

- b. Within 15 days after the effective date of this Order, P Johnston Ventures shall submit written certification of compliance with Ordering Provision 2.a.
- c. Within 60 days after the effective date of this Order, P Johnston Ventures shall ensure that all unauthorized waste at this Site is properly disposed of at an authorized facility.
- d. Within 75 days after the effective date of this Order, P Johnston Ventures shall submit written certification of compliance with Ordering Provision 2.c. including documentation of the dates and quantity of waste that was removed from the Site and copies of receipts from the permitted landfill or approved facility that received the waste.
- e. Written certification shall be submitted as described below, and include detailed supporting documentation including photographs, disposal receipts and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.c. above.

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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

and

Nicole Bealle, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon P Johnston Ventures. P Johnston Ventures is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If P Johnston Ventures fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, P Johnston Ventures's failure to comply is not a violation of this Order. P Johnston Ventures shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. P Johnston Ventures shall notify the Executive Director within seven days after P Johnston Ventures becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by P Johnston Ventures shall be made in writing to the Executive Director. Extensions are not effective until P Johnston Ventures receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to P Johnston Ventures if the Executive Director determines that P Johnston Ventures has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF ALFRED A. OLOKO

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Alfred A. Oloko. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Johnston Ventures, Inc.” (the “EDPRP”) with the Office of the Chief Clerk on April 21, 2006.

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I sent the EDFARP to P Johnston Ventures at its last known address on January 29, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating the respondent received notice of the EDFARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of P Johnston Ventures” (the “EDSARP”) with the Office of the Chief Clerk on June 26, 2008.

I sent the EDSARP to P Johnston Ventures at its last known address on June 26, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating the respondent received notice of the EDSARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

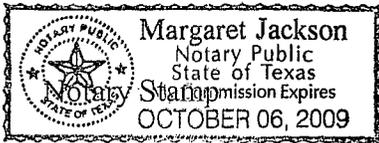
More than 20 days have elapsed since P Johnston Ventures received notice of the EDSARP. P Johnston Ventures failed to file an answer to the EDSARP, failed to request a hearing, and failed to schedule a settlement conference”.

alfred oloko

Alfred A. Oloko
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Alfred A. Oloko, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 17 day of July A.D., 2008.



Margaret Jackson

Notary Signature