

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2008-0051-MSW-E **TCEQ ID:** RN100224724 **CASE NO.:** 35183
RESPONDENT NAME: City of Corpus Christi

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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: J C Elliott Landfill, 7001 Ayers Street, Corpus Christi, Nueces County</p> <p>TYPE OF OPERATION: Landfill</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 30, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768 TCEQ Enforcement Coordinator: Mr. Clinton Sims, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-6933; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Lawrence Mikolajczyk, Acting Director, Streets and Solid Waste Services, City of Corpus Christi, P.O. Box 9277, Corpus Christi, Texas 78469 Mr. George K. Noe, City Manager, City of Corpus Christi, P.O. Box 9277, Corpus Christi, Texas 78469 Respondent's Attorney: Mr. Kerry Russell, Russell & Rodriguez, L.L.P., Texas Heritage Plaza, 102 West Morrow Street, Suite 103, Georgetown, Texas 78626</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: November 13, November 30, and December 3, 2007</p> <p>Date of NOV/NOE Relating to this Case: December 6, 2007 (NOE)</p> <p>Background Facts: These were routine investigations.</p> <p>WASTE</p> <p>Exceeded the Facility's permitted capacity [30 TEX. ADMIN. CODE § 330.121(a) and Municipal Solid Waste Permit No. 423-A].</p>	<p>Total Assessed: \$5,300</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$5,300</p> <p>Total Paid (Due) to General Revenue: \$0</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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: The Respondent displayed an indifference to legal duty.</p>	<p>Corrective Actions Taken:</p> <p>1) The Executive Director recognizes that the Respondent received Temporary Authorizations to temporarily alter the final contours of the J. C. Elliott Landfill on August 29, 2006 and May 14, 2007;</p> <p>2) The Executive Director recognizes that the Respondent submitted a major permit amendment application on April 4, 2007 and revisions in August 2007, November 2007, and January 2008 for the purpose of permanently maintaining elevations that were originally approved in the Overfill TAs; and</p> <p>3) The Executive Director recognizes that TCEQ sent Notices of Deficiencies to the Respondent on July 6, 2007, September 28, 2007, and December 6, 2007. TCEQ requested additional documentation on January 30, 2008. TCEQ received the Respondent's additional documentation on February 8, 2008. The permit amendment was declared technically complete on February 20, 2008.</p> <p>4) The Executive Director recognizes that the Respondent has ceased disposing of waste at the Facility.</p> <p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Within 90 days after the effective date of this Agreed Order, ensure that all unauthorized waste at the Facility is removed and properly disposed of at an authorized facility or obtain a permit amendment to allow this waste to remain in place; and</p> <p>b. Within 105 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including</p>

		photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.
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Additional ID No(s): 423-A



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision November 6, 2007

DATES	Assigned	17-Dec-2007		
	PCW	7-Jan-2008	Screening	4-Jan-2008
		EPA Due		

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Corpus Christi
Reg. Ent. Ref. No.	RN100224724
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	35183	No. of Violations	1
Docket No.	2008-0051-MSW-E	Order Type	Findings
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Cynthia McKaughan
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)	<i>Subtotal 1</i>	\$5,000
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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	6% Enhancement	<i>Subtotals 2, 3, & 7</i>
		\$300

Notes: Six percent enhancement is recommended for three NOVs that are without same or similar violations as those in the current enforcement action.

Culpability	No	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	0% Reduction	<i>Subtotal 5</i>	\$0
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	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.

	0% Enhancement	<i>Subtotal 6</i>	\$0
Total EB Amounts	\$283,511	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$7,211,250		

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$5,300
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$5,300

STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$5,300
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DEFERRAL	0% Reduction	<i>Adjustment</i>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY		\$5,300
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Screening Date 4-Jan-2008

Docket No. 2008-0051-MSW-E

PCW

Respondent City of Corpus Christi

Policy Revision 2 (September 2002)

Case ID No. 35183

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN100224724

Media [Statute] Municipal Solid Waste

Enf. Coordinator Cynthia McKaughan

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)	0	0%
	Other written NOVs	3	6%
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 judgments 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 submitted)	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%

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) 6%

>> 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

Six percent enhancement is recommended for three NOV's that are without same or similar violations as those in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 6%

Screening Date 4-Jan-2008 **Docket No.** 2008-0051-MSW-E **PCW**
Respondent City of Corpus Christi *Policy Revision 2 (September 2002)*
Case ID No. 35183 *PCW Revision November 6, 2007*
Reg. Ent. Reference No. RN100224724
Media [Statute] Municipal Solid Waste
Enf. Coordinator Cynthia McKaughan
Violation Number
Rule Cite(s)
Violation Description
Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="25%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events **Number of violation days**
mark only one with an x

daily	<input type="text"/>
monthly	<input checked="" type="checkbox"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$283,511"/>	Violation Final Penalty Total <input type="text" value="\$5,300"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$5,300"/>	

Economic Benefit Worksheet

Respondent City of Corpus Christi
Case ID No. 35183
Reg. Ent. Reference No. RN100224724
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
No commas or \$							

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	\$7,211,250	13-Nov-2007	26-Aug-2008	0.8	\$283,511	n/a	\$283,511
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for removing approximately 500,000 cubic yards of municipal solid waste. The Date Required is the date after the Temporary Authorization expired 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				0.0	\$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

\$7,211,250

TOTAL

\$283,511

Compliance History

Customer/Respondent/Owner-Operator:	CN600131858	City of Corpus Christi	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN100224724	J C ELLIOTT LANDFILL	Classification: AVERAGE	Site Rating: 1.00
<hr/>				
ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	NE0034B	
	AIR OPERATING PERMITS	PERMIT	2372	
	USED OIL	REGISTRATION	C82371	
	PETROLEUM STORAGE TANK	REGISTRATION	50364	
	REGISTRATION			
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	NE0034B	
	AIR NEW SOURCE PERMITS	AFS NUM	4835500693	
	AIR NEW SOURCE PERMITS	REGISTRATION	81842	
	MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	423A	
	MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	423B	
	MUNICIPAL SOLID WASTE PROCESSING	REGISTRATION	40228	
<hr/>				
Location:	7001 AYERS STREET IN CORPUS CHRISTI IN NUECES COUNTY			Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	January 03, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 03, 2003 to January 03, 2008			
<hr/>				
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Cynthia McKaughan	Phone:	(512) 239-0735	

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)? | <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.)
- | | | | |
|-----|---|------------|----------|
| N/A | 1 | 01/13/2003 | (13683) |
| | 2 | 04/10/2003 | (31112) |
| | 3 | 04/14/2003 | (24523) |
| | 4 | 06/10/2003 | (100499) |
| | 5 | 08/29/2003 | (150696) |
| | 6 | 02/17/2005 | (346163) |
| | 7 | 02/28/2006 | (453271) |
| | 8 | 08/10/2007 | (569678) |
| | 9 | 12/10/2007 | (609077) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|--|---------|--|
| Date: | 04/01/2003 | (24523) | |
| Self Report? | NO | | |
| Citation: | 30 TAC Chapter 330, SubChapter I 330.233(b)(1)
30 TAC Chapter 330, SubChapter I 330.233(b)(2)
30 TAC Chapter 330, SubChapter I 330.233(b)(3) | | |
| Rqmt Prov: | OP Section 8 - GWSAP 2.0
OP Section 8 - GWSAP 2.4 | | |
- Classification: Minor

OP Section 8 - GWSAP 2.4.11

OP Section 8 - GWSAP 2.4.2

OP Section 8 - GWSAP 2.4.8

Description: Failure to follow sample collection procedures as described in the GWSAP.

Date: 02/17/2005 (346163)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter N 335.407(f)(2)(A)

30 TAC Chapter 335, SubChapter N 335.407(f)(2)(B)

30 TAC Chapter 335, SubChapter N 335.407(f)(2)(C)

30 TAC Chapter 335, SubChapter N 335.407(f)(2)(D)

Description: J. C. Elliott landfill personnel failed to label containers in storage with an indication of the composition or physical state of the waste, or to indicate special safety recommendations and precautions for handling the waste, or to provide statement(s) which call attention to the particular hazardous properties of th

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter N 335.407(c)(8)

Description: Failure to demonstrate the skills necessary to manage hazardous household wastes.

Date: 03/09/2005 (396029)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter N 335.407(f)(2)(A)

30 TAC Chapter 335, SubChapter N 335.407(f)(2)(B)

30 TAC Chapter 335, SubChapter N 335.407(f)(2)(C)

30 TAC Chapter 335, SubChapter N 335.407(f)(2)(D)

Description: J. C. Elliott landfill personnel failed to label containers in storage with an indication of the composition or physical state of the waste, or to indicate special safety recommendations and precautions for handling the waste, or to provide statement(s) which call attention to the particular hazardous properties of th

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
CITY OF CORPUS CHRISTI
RN100224724

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-0051-MSW-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Corpus Christi ("the City") 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 City, represented by Kerry Russell of the law firm of Russell & Rodriguez, L.L.P., presented this agreement to the Commission.

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

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

I. FINDINGS OF FACT

1. The City owns and operates J.C. Elliott Landfill, a Type 1 facility at 7001 Ayers Street in Corpus Christi, Nueces County, Texas (the "Facility").

2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During investigations conducted on November 13, November 30 and December 3, 2007, TCEQ staff documented that the City failed to comply with Municipal Solid Waste Permit ("MSW") No. 423-A. Specifically, the Temporary Authorization ("TAs") to overfill at the Facility, (originally issued on August 29, 2006 and reissued on May 14, 2007), expired on November 12, 2007, after which the waste exceeded the permitted capacity.
4. The City received notice of the violations on December 11, 2007.
5. The Executive Director recognizes that the City received TAs to temporarily alter the final contours of the J. C. Elliott Landfill on August 29, 2006 and May 14, 2007.
6. The Executive Director recognizes that the City submitted a major permit amendment application on April 4, 2007 and revisions in August 2007, November 2007, and January 2008 for the purpose of permanently maintaining elevations that were originally approved in the Overfill TAs.
7. The Executive Director recognizes that TCEQ sent Notices of Deficiencies to the City on July 6, 2007, September 28, 2007, and December 6, 2007. TCEQ requested additional documentation on January 30, 2008. TCEQ received the City's additional documentation on February 8, 2008. The permit amendment was declared technically complete on February 20, 2008.
8. The Executive Director recognizes that the City has ceased disposing of waste at the Facility.

II. CONCLUSIONS OF LAW

1. The City is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the City exceeded the Facility's permitted capacity, in violation of 30 TEX. ADMIN. CODE § 330.121(a) and MSW Permit No. 423-A.
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Five Thousand Three Hundred Dollars (\$5,300) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Five Thousand Three Hundred Dollars (\$5,300) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP").

III. ORDERING PROVISIONS

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

1. The City is assessed an administrative penalty in the amount of Five Thousand Three Hundred Dollars (\$5,300) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Corpus Christi, Docket No. 2008-0051-MSW-E" to:

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

2. The City shall implement and complete an SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II Paragraph 4 above, Five Thousand Three Hundred Dollars (\$5,300) of the administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The City shall undertake the following technical requirements:
 - a. Within 90 days after the effective date of this Agreed Order, ensure that all unauthorized waste at the Facility is removed and properly disposed of at an authorized facility or obtain a permit amendment to allow this waste to remain in place; and
 - b. Within 105 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 No. 3.a. 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
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

4. The provisions of this Agreed Order shall apply to and be binding upon the City. The City 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.
5. If the City 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 City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City 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 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 City shall be made in writing to the Executive Director. Extensions are not effective until the City 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 the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
8. 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.
9. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed

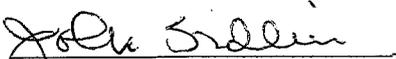
Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

10. 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.
11. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

9/26/2008
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Corpus Christi. I am authorized to agree to the attached Agreed Order on behalf of the City of Corpus Christi, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Corpus Christi waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

George K. Noe

Name (Printed or typed)
Authorized Representative of
City of Corpus Christi

4-17-08

Date

City Manager

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2008-0051-MSW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Corpus Christi

Payable Penalty Amount: Five Thousand Three Hundred Dollars (\$5,300)

SEP Amount: Five Thousand Three Hundred Dollars (\$5,300)

Type of SEP: Pre-approved

Third-Party Recipient: Beautify Corpus Christi Association-Cleanup of Illegal Dump Sites

Location of SEP: Nueces County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Amount to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to cleanup unauthorized dump sites, recycle materials when feasible, and properly dispose of all waste. Eligible sites will be limited to those where a responsible party cannot be found or is unable to clean the site and where reasonable efforts have been made to prevent the dumping.

SEP monies will be used for the direct cost of collection and disposal of waste. No SEP monies will be spent on administrative costs.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing the potential of health threats and diseases associated with illegal dump sites.

C. Minimum Expenditure

Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Beautify Corpus Christi Association
Daiquiri Richard, Executive Director
545 North Upper Broadway
Corpus Christi, Texas 78746

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

Attachment A
Docket Number: 2008-0051-MSW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

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Payable Penalty Amount: Five Thousand Three Hundred Dollars (\$5,300)

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