

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2008-0272-MLM-E **TCEQ ID:** RN105225098 **CASE NO.:** 35384  
**RESPONDENT NAME:** APACHE DISPOSAL, INC.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Apache Disposal, 13333 West Interstate Highway 10, Marion, Guadalupe County</p> <p><b>TYPE OF OPERATION:</b> Commercial trash hauling service</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on November 8, 2007, alleging that the Respondent was processing municipal solid waste without the required permit and that waste was being burned in an incinerator. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received but the complainant has not expressed the desire to protest this action or speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on August 25, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Thomas Greimel, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-5690; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Pete Garza, President, APACHE DISPOSAL, INC., 13333 West Interstate Highway 10, Marion, Texas 78124  <b>Respondent's Attorney:</b> Mr. Erich Birch, Attorney, Becker &amp; Moorman, L.L.P., 7000 North Mopac Expressway, Second Floor, Austin, Texas 78731</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                      November 8, 2007</p> <p><b>Date of Investigation Relating to this Case:</b> November 19, 2007</p> <p><b>Date of NOE Relating to this Case:</b>                      January 30, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to immediately clean up and report a release of diesel fuel from the aboveground storage tanks ("ASTs") to the agency within 24 hours of discovery and comply with release investigation and corrective action requirements. Specifically, the Respondent did not clean up and report the release of diesel fuel from the ASTs, and did not investigate and implement corrective action regarding the release. The release resulted in contamination of approximately 1.5 cubic yards of soil beneath and adjacent to the ASTs and was documented in photographs taken during the November 19, 2007 investigation [30 TEX. ADMIN. CODE §§ 334.129(a) and 334.75(a)(1)].</p> <p>2) Failure to obtain authorization for the storage and processing of municipal solid waste ("MSW"). Specifically, the Respondent stored, sorted and processed MSW at the Facility without a MSW permit [30 TEX. ADMIN. CODE § 330.7(a)].</p> <p>3) Failure to register ASTs containing a petroleum product with the agency. Specifically, two ASTs containing diesel fuel with capacities of 2,000 gallons and 3,000 gallons, respectively, were not registered with the agency [30 TEX. ADMIN. CODE § 334.127(a)].</p>	<p><b>Total Assessed:</b> \$5,200</p> <p><b>Total Deferred:</b> \$1,040  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$4,160</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>1) The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a) The ASTs were registered with the agency on December 5, 2007; and</p> <p>b) Documentation was received on May 23, 2008 confirming that contaminated soil resulting from the release of diesel fuel was excavated and removed.</p> <p><b>Ordering Provisions:</b></p> <p>2) The Order will require the Respondent to:</p> <p>a) Immediately upon the effective date of this Agreed Order:</p> <p>i. Cease storing and processing MSW at the Facility until such time that a MSW permit application is submitted to the TCEQ; and</p> <p>ii. Subsequent to submittal of a MSW permit application, respond completely and adequately, as determined by the TCEQ, to all letters requesting information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing until such time that a MSW permit is approved.</p> <p>b) Within 30 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 Provision Nos. 2.a.i. and 2.a.ii.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

**TCEQ**  
DATES

Assigned	4-Feb-2008
PCW	15-Feb-2008
Screening	11-Feb-2007
EPA Due	

**RESPONDENT/FACILITY INFORMATION**

Respondent	APACHE DISPOSAL, INC.		
Reg. Ent. Ref. No.	RN105225098		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

**CASE INFORMATION**

Enf./Case ID No.	36384	No. of Violations	3
Docket No.	2008-0272-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Thomas Greimel
Multi-Media	Petroleum Storage Tank	EC's Team	Enforcement Team 6
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**  Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability**   Enhancement **Subtotal 4**

Notes

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

Before NOV      NOV to EDRP/ Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/> X	(mark with x)

Notes

Enhancement\* **Subtotal 6**

Total EB Amounts	\$393	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$8,200	

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

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

Notes

**PAYABLE PENALTY**

Screening Date 11-Feb-2007

Docket No. 2008-0272-MLM-E

PCW

Respondent APACHE DISPOSAL, INC.

Policy Revision 2 (September 2002)

Case ID No. 35384

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN105225098

Media [Statute] Municipal Solid Waste

Enf. Coordinator Thomas Greimel

### 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	1	2%
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 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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV without same or similar violations.

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

Screening Date 11-Feb-2007  
 Respondent APACHE DISPOSAL, INC.  
 Case ID No. 35384  
 Reg. Ent. Reference No. RN105225098

Docket No. 2008-0272-MLM-E

PCW

Policy Revision 2 (September 2002)  
 PCW Revision January 29, 2008

Media [Statute] Municipal Solid Waste  
 Enf. Coordinator Thomas Greimel

Violation Number

Rule Cite(s)

30 Tex. Admin. Code §§ 334.129(a) and 334.75(a)(1)

Violation Description

Failed to immediately clean up and report a release of diesel fuel from the aboveground storage tanks (ASTs) to the agency within 24 hours of discovery and comply with release investigation and corrective action requirements. Specifically, the Respondent did not clean up and report the release of diesel fuel from the ASTs, and did not investigate and implement corrective action regarding the release. The release resulted in contamination of approximately 1.5 cubic yards of soil beneath and adjacent to the ASTs and was documented in photographs taken during the November 19, 2007 investigation.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

The environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

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 checked="" type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text"/>	

Violation Base Penalty

One quarterly event is recommended from the release discovery date of November 18, 2007 to the February 11, 2008 screening date.

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** APACHE DISPOSAL, INC.  
**Case ID No.** 35384  
**Reg. Ent. Reference No.** RN105225098  
**Media** Municipal Solid Waste  
**Violation No.** 1

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

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$3,000	19-Nov-2007	23-May-2008	0.5	\$76	n/a	\$76
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to excavate and remove contaminated soil and from the Facility and conduct confirmation soil sampling and analysis. Date Required is the investigation date. Final Date is the date of compliance.

**Avoided Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$100	18-Nov-2007	19-Nov-2007	0.0	\$0	\$100	\$100

Notes for AVOIDED costs

Estimated cost to report a release to the agency. Date Required is the release discovery date. Final Date is the date the report was due.

Approx. Cost of Compliance

\$3,100

TOTAL

\$176

Screening Date 11-Feb-2007

Docket No. 2008-0272-MLM-E

PCW

Respondent APACHE DISPOSAL, INC.

Policy Revision 2 (September 2002)

Case ID No. 35384

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN105225098

Media [Statute] Municipal Solid Waste

Enf. Coordinator Thomas Greimel

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"/>	

OR

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="10%"/>

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

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

## Economic Benefit Worksheet

**Respondent** APACHE DISPOSAL, INC.  
**Case ID No.** 35384  
**Reg. Ent. Reference No.** RN105225098  
**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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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				0.0	\$0	n/a	\$0
Permit Costs	\$5,000	19-Nov-2007	30-Sep-2008	0.9	\$216	n/a	\$216
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a MSW permit. Date Required is the investigation date. Final Date is the date the Respondent is expected to come into 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

\$5,000

TOTAL

\$216

Screening Date 11-Feb-2007

Docket No. 2008-0272-MLM-E

PCW

Respondent APACHE DISPOSAL, INC.

Policy Revision 2 (September 2002)

Case ID No. 35384

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN105225098

Media [Statute] Municipal Solid Waste

Enf. Coordinator Thomas Greimel

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="text"/>	<input type="text"/>	<input type="text" value="10%"/>

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

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

## Economic Benefit Worksheet

**Respondent** APACHE DISPOSAL, INC.  
**Case ID No.** 35384  
**Reg. Ent. Reference No.** RN105225098  
**Media** Municipal Solid Waste  
**Violation No.** 3

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	19-Nov-2007	5-Dec-2007	0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to register two ASTs with the agency. Date Required is the investigation date. Final Date is the date of compliance.

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$0





TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
APACHE DISPOSAL, INC.  
RN105225098

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2008-0272-MLM-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding APACHE DISPOSAL, INC. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division and the Respondent, represented by Erich Birch of the law firm of Birch, Becker, & Moorman, L.L.P., appear before the Commission and together stipulate that:

1. The Respondent owns and operates a commercial trash hauling service at 13333 West Interstate Highway 10 in Marion, Guadalupe County, Texas (the "Facility").
2. The Facility involves or involved the processing of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Respondent's two aboveground storage tanks ("ASTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
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 February 4, 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 Five Thousand Two Hundred Dollars (\$5,200) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand One Hundred Sixty Dollars (\$4,160) of the administrative penalty and One Thousand Forty Dollars (\$1,040) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
  - a. The ASTs were registered with the agency on December 5, 2007; and
  - b. Documentation was received on May 23, 2008 confirming that contaminated soil resulting from the release of diesel fuel was excavated and removed.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to immediately clean up and report a release of diesel fuel from the ASTs to the agency within 24 hours of discovery and comply with release investigation and corrective action requirements, in violation of 30 TEX. ADMIN. CODE §§ 334.129(a) and 334.75(a)(1), as documented during an investigation conducted on November 19, 2007. Specifically, the Respondent did not clean up and report the release of diesel fuel from the ASTs, and did not investigate and implement corrective action regarding the release. The release resulted in contamination of approximately 1.5 cubic yards of soil beneath and adjacent to the ASTs and was documented in photographs taken during the November 19, 2007 investigation.



2. Failed to obtain authorization for the storage and processing of MSW, in violation of 30 TEX. ADMIN. CODE § 330.7(a), as documented during an investigation conducted on November 19, 2007. Specifically, the Respondent stored, sorted and processed MSW at the Facility without a MSW permit.
3. Failed to register ASTs containing a petroleum product with the agency, in violation of 30 TEX. ADMIN. CODE § 334.127(a), as documented during an investigation conducted on November 19, 2007. Specifically, two ASTs containing diesel fuel with capacities of 2,000 gallons and 3,000 gallons, respectively, were not registered with the agency.

### 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: APACHE DISPOSAL, INC., Docket No. 2008-0272-MLM-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order:
    - i. Cease storing and processing MSW at the Facility until such time that a MSW permit application is submitted to the TCEQ; and
    - ii. Subsequent to submittal of a MSW permit application, respond completely and adequately, as determined by the TCEQ, to all letters requesting information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing until such time that a MSW permit is approved.
  - b. Within 30 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. and 2.a.ii.



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  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

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

John S. ...  
For the Executive Director

9/27/2008  
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.

Pete Garza  
Signature

<sup>PG</sup>  
6-9-08  
Date

PETE GARZA  
Name (Printed or typed)  
Authorized Representative of  
APACHE DISPOSAL, INC.

Pres  
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.

