

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2005-1856-MLM-E TCEQ ID NO.: RN101976926 CASE NO.: 27150

RESPONDENT NAME: BETTY BROWN

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" 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: 6941 South US Highway 277, San Angelo, Tom Green County</p> <p>TYPE OF OPERATION: Pipe and supplies sales facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There are no other pending enforcement actions regarding this facility.</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 July 14, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Colin Barth, Waste Enforcement Section, MC 128, (512) 239-0068 TCEQ Regional Contact: Mr. Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9479 Respondent: Ms. Betty Brown, Owner, 6941 South US Highway 277, San Angelo, Texas 76904-4109 Respondent's Attorney: Mr. Jeffrey S. Lisson, Attorney, Carter, Boyd & Lisson, P.C., 515 West Harris Avenue, Suite 100 San Angelo, Texas 76903</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>Dates of Complaints Relating to this Case: None</p> <p>Dates of Investigations Relating to this Case: September 7, 2005</p> <p>Date of NOE Relating to this Case: October 11, 2005</p> <p>Background Facts:</p> <p>On March 20, 2006, the Executive Director filed the EDPRP against Brown's Pipe & Supply, Inc. Additional investigations and research revealed the correct respondent is Betty Brown. On February 13, 2007, the Executive Director filed the EDPRP against Betty Brown. The Respondent filed an answer to the EDPRP requesting a hearing on March 22, 2007. The TCEQ and the Respondent reached an agreement and the agency received a signed Agreed Order on or about June 5, 2008.</p> <p>Current Compliance Status: Not in compliance</p> <p>MLM:</p> <p>1) Failed to comply with the general prohibition of outdoor burning in Texas by conducting the unauthorized burning of municipal solid waste [30 TEX. ADMIN. CODE §§ 111.201 and 111.219(7), and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failed to prevent the unauthorized collection, handling, storage, or disposal of industrial hazardous and municipal solid waste [30 TEX. ADMIN. CODE §§ 335.4 and 330.5(c)].</p>	<p>Total Assessed: \$6,000</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 Paid/Due to General Revenue: \$225/\$5,775</p> <p>The Respondent has paid \$225 of the administrative penalty. The remaining amount of \$5,775 shall be payable in 35 monthly payments of \$165 each.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1) Immediately:</p> <p>a. Cease unauthorized burning of waste materials; and</p> <p>b. Cease to cause, suffer, allow, or permit any additional industrial hazardous or municipal solid waste to be collected, handled, stored or disposed of.</p> <p>2) Within 30 days, remove all unauthorized waste disposed on-site to an approved facility.</p> <p>3) Within 60 days, obtain soil samples from the burn-site and surrounding area and conduct analysis for TPH to determine compliance with the limits established by state and federal regulations.</p> <p>4) Within 75 days, submit written certification to demonstrate compliance with Ordering Provision no. 3. If the results of the TPH analysis indicate levels that continue to exceed state and federal regulations, submit an Affected Property Assessment Report to TCEQ. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program.</p> <p>5) Within 90 days, submit written certification to demonstrate compliance with these Ordering Provisions.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	18-Oct-2005	Screening	27-Oct-2005	EPA Due	
	PCW	08-Feb-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Betty Brown
Reg. Ent. Ref. No.	RN101976926
Facility/Site Region	8-San Angelo
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	27150	No. of Violations	2
Docket No.	2005-1856-MLM-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Enf. Coordinator	Colin Barth
Multi-Media	Air Quality and Municipal Solid Waste	EC's Team	Enforcement Team 8
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$6,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: The Respondent has no prior orders or NOVs.

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

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes: The Respondent is not yet in compliance.

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$133	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,274	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount **\$6,000**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,000
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DEFERRAL	0% Reduction	Adjustment	\$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 due to non expedited case.

PAYABLE PENALTY	\$6,000
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Brown PCW.ppw

Screening Date 27-Oct-2005

Docket No. 2005-1856-MLM-E

PCW

Respondent Betty Brown

Policy Revision 2 (September 2002)

Case ID No. 27150

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101976926

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Colin Barth

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent has no prior orders or NOVs.

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

Brown PCW.ppw

Docket No. 2005-1856-MLM-E

PCW

Screening Date 27-Oct-2005

Respondent Betty Brown

Case ID No. 27150

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101976926

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Colin Barth

Violation Number

Primary Rule Cite(s) 30 Tex. Admin. Code § 111.201

Secondary Rule Cite(s) 30 Tex. Admin. Code §§ 111.219(7) and Tex. Health and Safety Code § 382.085(b)

Violation Description Failure to comply with the general prohibition of outdoor burning in Texas by conducting the unauthorized burning of municipal solid waste, as documented during an investigation conducted on September 7, 2005. Specifically, treated wood, spools of steel cable, paint cans, and metal appliances were burned at the site.

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text" value="10%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

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

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

Adjustment

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

Violation Base Penalty

One single event is recommended.

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: Betty Brown
 Case ID No. 27150
 Reg. Ent. Reference No. RN101976926
 Media [Statute]: Industrial and Hazardous Waste
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$274	07-Sep-2005	30-Jun-2006	0.8	\$11	n/a	\$11
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of removal and disposal of the waste based on \$6.85 per cubic yard for approximately 40 cubic yards, from the investigation date until the expected 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	\$274	TOTAL	\$11
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Screening Date 27-Oct-2005

Docket No. 2005-1856-MLM-E

PCW

Respondent Betty Brown

Policy Revision 2 (September 2002)

Case ID No. 27150

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101976926

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Colin Barth

Violation Number

Primary Rule Cite(s) 30 Tex. Admin. Code §§ 335.4 and 330.5(c)

Secondary Rule Cite(s)

Violation Description

Failure to prevent the unauthorized collection, handling, storage, or disposal of industrial hazardous and municipal solid waste, as documented during an investigation conducted on September 7, 2005. Specifically, steel cable, paint cans, appliances, a wood utility pole and acid lead battery were disposed at the site.

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		X		<input type="text" value="25%"/>
Potential				

>> Programmatic Matrix

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

Matrix Notes

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

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

Two monthly events are recommended from the investigation date of September 7, 2005 to the screening date of October 27, 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)

Brown PCW.dpw

Economic Benefit Worksheet

Respondent: Betty Brown
 Case ID No.: 27150
 Reg. Ent. Reference No.: RN101976926
 Media [Statute]: Industrial and Hazardous Waste
 Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.0	\$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	07-Sep-2005	30-Jun-2006	0.8	\$122	n/a	\$122
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for remediation of the burn pit area, from the investigation date until the expected 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 **\$3,000**

TOTAL \$122

Compliance History

Customer/Respondent/Owner-Operator:	CN603149519 BROWN, BETTY	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN101976926 SAN ANGELO YARD	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE PROCESSING	EPA ID	TXR000066191
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	TG0116C
	INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED	ID NUMBER	F1867
	INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED	ID NUMBER	TXR000066191
Location:	6941 S US HIGHWAY 277, SAN ANGELO, TX, 76904	Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 08 - SAN ANGELO		
Date Compliance History Prepared:	August 29, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 29, 2003 to August 29, 2008		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Clinton Sims Phone: (512) 239-6933

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSS).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BETTY BROWN
RN101976926

§
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§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2005-1856-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 Betty Brown ("Ms. Brown") under the authority of the TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, represented by the Litigation Division, and Ms. Brown, represented by Jeffrey Lisson of the law firm of Carter, Boyd & Lisson, P.C., appear before the Commission and together stipulate that:

1. Ms. Brown owned and operated a pipe and supplies sales facility at 6941 South US Highway 277 in San Angelo, Tom Green County, Texas (the "Site").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE chs. 361 and 382, and TCEQ rules.
3. The Commission and Ms. Brown agree that the Commission has jurisdiction to enter this Agreed Order, and that Ms. Brown is subject to the Commission's jurisdiction.
4. Ms. Brown received notice of the violations alleged in Section II ("Allegations") on or about October 16, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Ms. Brown of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of six thousand dollars (\$6,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Ms.

Brown has paid two hundred twenty-five dollars (\$225.00) of the administrative penalty. The remaining amount of five thousand seven hundred seventy-five dollars (\$5,775.00) shall be payable in thirty-five monthly payments of one hundred sixty-five dollars (\$165.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Ms. Brown fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the acceleration of any remaining balance constitutes the failure by Ms. Brown to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of any deferred penalty amount.

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 Brown have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Brown has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Ms. Brown is alleged to have violated:

1. 30 TEX. ADMIN. CODE §§ 111.201 and 111.219(7) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to comply with the general prohibition of outdoor burning in Texas by conducting the unauthorized burning of municipal solid waste, as documented during an investigation conducted on September 7, 2005. Specifically, treated wood, spools of steel cable, paint cans, and metal appliances were burned at the Site.

2. 30 TEX. ADMIN. CODE §§ 335.4 and 330.5(c) by failing to prevent the unauthorized collection, handling, storage, or disposal of industrial hazardous and municipal solid waste, as documented during an investigation conducted on September 7, 2005. Specifically, steel cable, paint cans, appliances, a wood utility pole and acid lead battery were disposed at the Site.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Ms. Brown pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Ms. Brown'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: Betty Brown, Docket No. 2005-1856-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 Ms. Brown shall undertake the following technical requirements:
 - a. Immediately after the effective date of this Agreed Order, cease burning unauthorized waste materials;
 - b. Immediately after the effective date of this Agreed Order, cease to cause, suffer, allow, or permit any additional industrial hazardous or municipal solid waste to be collected, handled, stored or disposed of in violation of 30 TEX. ADMIN. CODE §§ 335.4 and 330.5;
 - c. Within 30 days after the effective date of this Agreed Order, remove all unauthorized waste disposed on-site to an approved facility;
 - d. Within 60 days after the effective date of this Agreed Order, obtain soil samples from the burn-site and surrounding area and conduct analysis for TPH to determine

compliance with the limits established by state and federal regulations. Ms. Brown shall conduct sampling of the Site in the following manner:

1. Collect five samples two feet into native soil, one from each sidewall, and one from the bottom of the pit.
 2. Run all samples for TPH using TX1005 method.
 3. Screen samples with a PID, and run the sample with the highest PID response for VOCs by EPA 8260.
 4. Run the samples with the highest TPH result in the C12-C18 range for PAH.
 5. Address results according to Texas Risk Reduction Program.
- e. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.d. or if the results of the TPH analysis indicate levels that continue to exceed state and federal regulations, submit an Affected Property Assessment Report, pursuant to 30 Tex. Admin. Code § 350.91, to the Executive Director for approval. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 Tex. Admin. Code ch. 350 which may include: plans, reports, and notices under Subchapter E (30 Tex. Admin. Code § 350.92 to 350.96); financial assurance; and Institutional Controls under Subchapter F.
- f. Within 90 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 Provisions Nos. 2.a. through 2.e.

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 149
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
6220 South Oakes, Suite K
San Angelo, Texas 76903-7013

3. The provisions of this Agreed Order shall apply to and be binding upon Ms. Brown. Ms. Brown is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If Ms. Brown 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, Ms. Brown's failure to comply is not a violation of this Agreed Order. Ms. Brown shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Ms. Brown shall notify the Executive Director within seven days after she 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 Ms. Brown shall be made in writing to the Executive Director. Extensions are not effective until Ms. Brown 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 Ms. Brown 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 Ms. Brown, or three days after the date on which the Commission mails notice of the Order to Ms. Brown, 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

[Handwritten Signature]

For the Executive Director

8/22/08

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, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

Betty Brown
Signature

5-21-08
Date

Betty Brown
Name (Printed or typed)
Authorized Representative of
Betty Brown

Betty Brown
Title