

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1041-MLM-E TCEQ ID: RN105212153 CASE NO.: 34059
RESPONDENT NAME: DARYL MAJOR

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input checked="" 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 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

SITE WHERE VIOLATION(S) OCCURRED: 1594 Farm-to-Market Road 1795, Willis, San Jacinto County

TYPE OF OPERATION: Unauthorized municipal solid waste disposal site

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There has been one complaint. There is no record of additional pending enforcement actions regarding this person. There are two additional pending enforcement actions regarding this site.

INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on February 25, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
TCEQ Enforcement Coordinator: Mr. Clinton Sims, Waste Enforcement Section, MC 128, (512) 239-6933
TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 899-8705
Respondent: Mr. Daryl Major, 1594 FM 1795, Willis, Texas 77378
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: April 3, 2007</p> <p>Date of Investigation Relating to this Case: April 5, 2007</p> <p>Date of NOE Relating to this Case: June 5, 2007 (NOE)</p> <p>Background Facts:</p> <p>The EDPRP was filed on November 21, 2007 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received notice of the EDPRP. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Texas Department of Transportation (construction project manager) and Smith & Co. Construction (contractor for TxDOT) were cited for unauthorized disposal of municipal solid waste for transporting MSW to the Site, and have both agreed to settle their respective enforcement cases.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>MLM:</p> <ol style="list-style-type: none"> Failed to prevent the unauthorized disposal of municipal solid waste [30 TEX. ADMIN. CODE § 330.15(c)]. Failed to comply with the general prohibition on outdoor burning [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 	<p>Total Assessed: \$8,500</p> <p>Total Deferred: \$0</p> <p>Total Due to General Revenue: \$8,500</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</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 Provision(s)</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately: <ol style="list-style-type: none"> Cease all unauthorized burning of waste at the Site; and Cease accepting and disposing of any additional waste at the Site. Within 30 days, remove all municipal solid waste and dispose of the waste at an authorized facility. Within 45 days, submit written certification demonstrating compliance.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) PCW Revision June 26, 2007

DATES	Assigned	11-Jun-2007	Screening	29-Jun-2007	EPA Due	
	PCW	12-Oct-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Daryl Major		
Reg. Ent. Ref. No.	RN105212153		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	34059	No. of Violations	2	
Docket No.	2007-1041-MLM-E	Order Type	1660	
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Clinton Sims	
Multi-Media	Air	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>	\$8,500
---	-------------------	---------

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	<i>Subtotals 2, 3, & 7</i>	\$0
---------------------------	----------------	--------------------------------	-----

Notes: The Respondent has not received any previous NOVs or Orders at this site in the past five years.

Culpability	No	0% Enhancement	<i>Subtotal 4</i>	\$0
--------------------	----	----------------	-------------------	-----

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	<i>Subtotal 5</i>	\$0
------------------------------------	--------------	-------------------	-----

	Before NOV	NOV to EDRP/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	\$3,617	<i>*Capped at the Total EB \$ Amount</i>	
Approx. Cost of Compliance	\$72,826		

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$8,500
-----------------------------	-----------------------	---------

OTHER FACTORS AS JUSTICE MAY REQUIRE

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

Notes:

<i>Final Penalty Amount</i>	\$8,500
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT

<i>Final Assessed Penalty</i>	\$8,500
-------------------------------	---------

DEFERRAL

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

Notes:

Deferral not offered for non-expedited settlement

PAYABLE PENALTY

\$8,500

Screening Date 29-Jun-2007

Docket No. 2007-1041-MLM-E

PCW

Respondent Daryl Major

Policy Revision 2 (September 2002)

Case ID No. 34059

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105212153

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

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 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%
<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 not received any previous NOVs or Orders at this site in the past five years.

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

Screening Date 29-Jun-2007	Docket No. 2007-1041-MLM-E	PCW
Respondent Daryl Major		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 34059		<i>PCW Revision June 26, 2007</i>
Reg. Ent. Reference No. RN105212153		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Clinton Sims		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code § 330.15(c)	
Violation Description	Failed to prevent the unauthorized disposal of municipal solid waste, as documented during an investigation conducted on April 5, 2007. Specifically, the Respondent allowed approximately 5,600 cubic yards of vegetative waste from the Texas Department of Transportation's highway construction activities to be disposed on his property.	
	Base Penalty	<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification			
	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="0%"/>
Matrix Notes	Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.			
				Adjustment <input type="text" value="\$7,500"/>

Violation Events

Number of Violation Events	<input type="text" value="3"/>		<input type="text" value="85"/>	Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty	<input type="text" value="\$7,500"/>
	monthly	<input checked="" type="text" value="x"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
Three monthly events are recommended based on the April 5, 2007 investigation date to the June 29, 2007 screening date.				

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$3,590"/>	Violation Final Penalty Total <input type="text" value="\$7,500"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$7,500"/>	

Economic Benefit Worksheet

Respondent Daryl Major
Case ID No. 34059
Reg. Ent. Reference No. RN105212153
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	\$72,800	5-Apr-2007	30-Mar-2008	1.0	\$3,590	n/a	\$3,590
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to remove the municipal solid waste and dispose of it at an approved municipal solid waste disposal site (\$13 per cubic yard). Date Required is the investigation date and the Final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$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	\$72,800	TOTAL	\$3,590
-----------------------------------	----------	--------------	---------

Screening Date 29-Jun-2007	Docket No. 2007-1041-MLM-E	PCW
Respondent Daryl Major	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34059	<i>PCW Revision June 26, 2007</i>	
Reg. Ent. Reference No. RN105212153		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Clinton Sims		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)"/>	
Violation Description	<input type="text" value="Failed to comply with the general prohibition on outdoor burning, as documented during an investigation conducted on April 5, 2007. Specifically, the Respondent burned approximately two cubic yards of vegetative waste at the time of the investigation."/>	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
		Major	Moderate		Minor
	Release	<input type="text"/>	<input type="text"/>		<input type="text" value="x"/>
	Actual	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification				
		Major	Moderate		Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Percent	<input type="text" value="0%"/>		<input type="text"/>	
Matrix Notes	<input type="text" value="Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation."/>				

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text" value="x"/>

Violation Base Penalty

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 Daryl Major
Case ID No. 34059
Reg. Ent. Reference No. RN105212153
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
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal	\$26	5-Apr-2007	30-Mar-2008	1.0	\$1	\$26	\$27
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

Estimated cost to properly dispose of approximately two cubic yards of waste that was disposed of by burning (\$13 per cubic yard). The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Approx. Cost of Compliance

\$26

TOTAL

\$27

Compliance History

Customer/Respondent/Owner-Operator: CN603180779 MAJOR, DARYL Classification: AVERAGE Rating:
Regulated Entity: RN105212153 VACANT PROPERTY Classification: AVERAGE Site Rating:
ID Number(s):
Location: 1594 FM 1795, WILLIS, TX, 77378
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: June 25, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 25, 2002 to June 25, 2007

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
DARYL MAJOR;
RN105212153**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2007-1041-MLM-E**

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Daryl Major ("Mr. Major").

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

FINDINGS OF FACT

1. Mr. Major owns and operates an unauthorized municipal solid waste disposal site located at 1594 Farm-to-Market Road 1795, Willis, San Jacinto County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12), and involves the management and disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on April 5, 2007, a TCEQ Beaumont Regional Office investigator documented that Mr. Major:
 - a. Failed to prevent the unauthorized disposal of municipal solid waste. Specifically, Mr. Major allowed approximately 5,600 cubic yards of vegetative waste from the Texas Department of Transportation's highway construction activities to be disposed of on his property; and
 - b. Failed to comply with the general prohibition on outdoor burning. Specifically, the investigator observed Mr. Major burning approximately two cubic yards of vegetative waste.

4. Mr. Major received notice of the violations on or about June 10, 2007.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Daryl Major" (the "EDPRP") in the TCEQ Chief Clerk's office on November 21, 2007.
6. By letter dated November 21, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Major with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Major received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Major received notice of the EDPRP, provided by the Executive Director. Mr. Major failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Major is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Major failed to prevent the unauthorized disposal of municipal solid waste, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Finding of Fact No. 3.b., Mr. Major failed to comply with the general prohibition on outdoor burning, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Major with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 7, Mr. Major failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Major and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Major for violations of the state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of eight thousand five hundred dollars (\$8,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Major is assessed an administrative penalty in the amount of eight thousand five hundred dollars (\$8,500.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Major's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Daryl Major; Docket No. 2007-1041-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. Mr. Major shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Major shall:
 - i. Cease all unauthorized burning of waste at the Site; and
 - ii. Cease accepting and disposing of any additional waste at the Site.

- b. Within 30 days after the effective date of this Order, Mr. Major shall remove all municipal solid waste and dispose of the wastes at an authorized facility.
- c. Within 45 days after the effective date of this Order, Mr. Major shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with these Ordering Provisions. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Mr. Major shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Derek Eades, Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703-1892

- 3. All relief not expressly granted in this Order is denied.
- 4. The provisions of this Order shall apply to and be binding upon Mr. Major. Mr. Major is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.

5. If Mr. Major fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Major's failure to comply is not a violation of this Order. Mr. Major shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Major shall notify the Executive Director within seven days after Mr. Major becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Major shall be made in writing to the Executive Director. Extensions are not effective until Mr. Major 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 Mr. Major if the Executive Director determines that Mr. Major has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Daryl Major
Docket No. 2007-1041-MLM-E
Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF LENA ROBERTS

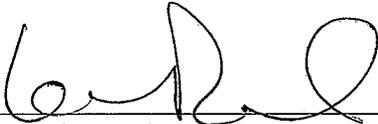
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Daryl Major” (the “EDPRP”) was filed with the Office of the Chief Clerk on November 21, 2007.

The EDPRP was mailed to Mr. Major at his last known address on November 21, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Major received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

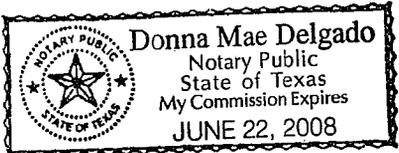
More than 20 days have elapsed since Mr. Major received notice of the EDPRP. Mr. Major failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

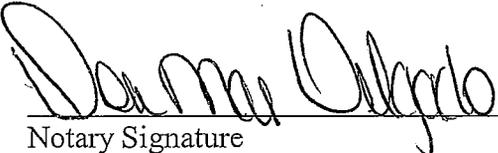


Lena Roberts, Attorney .
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 8th day of January, A.D., 2008.





Notary Signature