

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2006-1974-MLM-E TCEQ ID NO.: RN102327509 CASE NO.: 31663**

**RESPONDENT NAME: CITY OF HARLINGEN**

<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 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:** 1.25 miles east of State Highway 448 on Farm-to-Market Road 106, Harlingen, Cameron County

**TYPE OF OPERATION:** Closed municipal solid waste landfill

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility.

**INTERESTED PARTIES:** 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 March 17, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053

Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

**TCEQ Enforcement Coordinator:** Mr. Marlin Bullard, Waste Enforcement Section, MC R-9, (254) 761-3038

**TCEQ Regional Contact:** Mr. David A. Ramirez, Harlingen Regional Office, MC R-15, (956) 430-6048

**Respondent:** The Honorable Chris Boswell, Mayor of the City of Harlingen, 118 East Tyler, Harlingen, Texas 78551

**Respondent's Attorney:** Mr. Duncan Norton, Lloyd Gosselink Blevins Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Dates of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> April 17, 2006</p> <p><b>Date of NOE Relating to this Case:</b> October 30, 2006</p> <p><b>Background Facts:</b></p> <p>The violations in this action were discovered during a 2006 investigation of the Respondent's post-closure of MSW Permit 169. The Facility had ceased accepting MSW but it had conducted a mulch operation of a portion of the Facility-the primary source on the violations. In response to the enforcement action, the Respondent prepared a plan for disposal with input from the Region and the Remediation Division. The plan was approved.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>MLM:</b></p> <p>1. Failed to dispose of municipal solid waste at an authorized site [30 TEX. ADMIN. CODE § 330.15(c)].</p> <p>2. Failed to maintain a copy of the post-closure maintenance plan at the municipal solid waste site, or an alternate location approved by the Executive Director [30 TEX. ADMIN. CODE § 330.125(a)].</p> <p>3. Failed to correct, as needed, lack of vegetative growth [30 TEX. ADMIN. CODE § 330.463(a)(1)].</p>	<p><b>Total Assessed:</b> \$22,560</p> <p><b>Total Deferred:</b> \$0</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$22,560</p> <p>The Respondent has paid the administrative penalty in full.</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 checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Action Taken</b></p> <p>The Executive Director recognizes that the Respondent submitted a form for the revocation of the Respondent's operational permit on August 28, 2006.</p> <p><b>Ordering Provisions</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Immediately:</p> <p style="padding-left: 40px;">a. Cease accepting additional wastes at the Site; and</p> <p style="padding-left: 40px;">b. Implement and comply with the attached "Proposed Alternate Plan / Mulch Area Soil Cover Work Plan" prepared by Raba-Kistner Consultants, Inc. of behalf of the Respondent.</p> <p>2. Within 180 days, submit written certification demonstrating compliance with Ordering Provision No. 1.</p>

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>4. Failed to control access to a municipal solid waste site by means of artificial barriers, natural barriers, or a combination of both, appropriate to protect human health and safety and the environment [30 TEX. ADMIN. CODE § 330.131 and MSW Permit No. 169 Provision E.1. Site Development and Operation].</p> <p>5. Failed to submit to the Executive director a request for revocation of a site operational permit upon completion of the post-closure care period for the final unit at the site [30 TEX. ADMIN. CODE § 330.465(b)].</p> <p>6. Failed to demonstrate acceptable financial assurance for the costs of the post-closure care of the municipal solid waste landfill [30 TEX. ADMIN. CODE §§ 37.8021 and 330.507(b)].</p> <p>7. Failed to comply with the general prohibition of outdoor burning in Texas by conducting the unauthorized burning of municipal solid waste and failure to control the discharge of an air contaminant is such concentration and duration as to adversely affect human health or welfare, animal life, vegetation, or property or as to interfere with the normal use and enjoyment of animal live, vegetation, or property [30 TEX. ADMIN. CODE §§ 101.4 and 111.201 and TEX. HEALTH &amp; SAFETY CODE § 382.085(a) and (b)].</p>		



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 17, 2006

TCEQ

DATES	Assigned	30-Oct-2006	Screening	8-Nov-2006	EPA Due	
	PCW	23-Apr-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	City of Harlingen
Reg. Ent. Ref. No.	RN102327509
Facility/Site Region	15-Harlingen
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	31663	No. of Violations	7
Docket No.	2006-1974-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Marlin Bullard
Multi-Media	Air Quality	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

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** Subtotals 2, 3, & 7

Notes

**Culpability** Subtotal 4

Notes

**Good Faith Effort to Comply** Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with x)

Notes

**Total EB Amounts**  Subtotal 6   
 Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE** Adjustment

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

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL** Adjustment

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

Notes

**PAYABLE PENALTY**

Screening Date 8-Nov-2006

Docket No. 2006-1974-MLM-E

PCW

Respondent City of Harlingen

Policy Revision 2 (September 2002)

Case ID No. 31663

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102327509

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

### 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)	2	10%
	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) 10%

>> 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

Enhancement for two NOV's with the same or similar violations at this site within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 8-Nov-2006

Docket No. 2006-1974-MLM-E

PCW

Respondent City of Harlingen

Policy Revision 2 (September 2002)

Case ID No. 31663

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102327509

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent <input type="text" value="25%"/>	
	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"/>		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

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 checked="" type="text" value="x"/>
	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** City of Harlingen  
**Case ID No.** 31663  
**Reg. Ent. Reference No.** RN102327509  
**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
<b>Delayed Costs</b>							
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	\$293,800	17-Apr-2006	9-Oct-2007	1.5	\$21,733	n/a	\$21,733
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly dispose of approximately 22,600 cubic yards of waste an authorized facility at \$13 per cubic yard. The 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

\$293,800

TOTAL

\$21,733

Screening Date 8-Nov-2006

Docket No. 2006-1974-MLM-E

PCW

Respondent City of Harlingen

Policy Revision 2 (September 2002)

Case ID No. 31663

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102327509

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 330.125(a)

Violation Description Failure to maintain a copy of the post-closure maintenance plan at the municipal solid waste facility, or an alternate location approved by the Executive Director, as documented during an investigation conducted on April 17, 2006. Specifically, a copy of the post-closure maintenance plan was not available for review during the investigation at the closed landfill or an alternate location approved by the Executive Director.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 205

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$18

Violation Final Penalty Total \$1,600

This violation Final Assessed Penalty (adjusted for limits) \$1,600

## Economic Benefit Worksheet

**Respondent:** City of Harlingen  
**Case ID No.:** 31663  
**Reg. Ent. Reference No.:** RN102327509  
**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
<b>Delayed Costs</b>							
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	\$250	17-Apr-2006	9-Oct-2007	1.5	\$18	n/a	\$18
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:** Estimated cost to maintain a copy of the post-closure maintenance plan at the landfill site or at an alternate location approved by the Executive Director. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>							
<b>ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)</b>							
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** **TOTAL**  
\$18

Screening Date 8-Nov-2006

Docket No. 2006-1974-MLM-E

PCW

Respondent City of Harlingen

Policy Revision 2 (September 2002)

Case ID No. 31663

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102327509

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 330.463(a)(1)

Violation Description Failure to correct, as needed, lack of vegetative growth, as documented during an investigation conducted on April 17, 2006. Specifically, vegetative growth was not being maintained in areas that had been covered by mulch and other waste disposed of on the surface of approximately four acres of the seventy nine acre closed landfill.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5%
	Potential			x	

X	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Matrix Notes Human health or the environment could be exposed to a insignificant amount of pollutants which would not exceed protective levels.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1 Number of violation days 205

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$104

Violation Final Penalty Total \$800

This violation Final Assessed Penalty (adjusted for limits) \$800

## Economic Benefit Worksheet

**Respondent** City of Harlingen  
**Case ID No.** 31663  
**Reg. Ent. Reference No.** RN102327509  
**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
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No commas or \$

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$1,000	17-Apr-2006	9-Oct-2007	1.5	\$5	\$99	\$104
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

Estimated cost to promote vegetative growth at the site. The Date Required is the date of the investigation 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

\$1,000

TOTAL

\$104

Screening Date 8-Nov-2006

Docket No. 2006-1974-MLM-E

PCW

Respondent City of Harlingen

Policy Revision 2 (September 2002)

Case ID No. 31663

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102327509

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 330.131 and MSW Permit No. 169 Provision E.1. Site Development and Operation

Violation Description Failure to control access to a municipal solid waste facility by means of artificial barriers, natural barriers, or a combination of both, appropriate to protect human health and safety and the environment, as documented during an investigation conducted on April 17, 2006. Specifically, approximately only 50 feet of the 6,122 foot perimeter were enclosed by a fence.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					10%
Potential		x			

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Human health or the environment could be exposed to a significant amount of pollutants which would not exceed protective levels.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 Number of violation days 205

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,000

Three quarterly events are recommended from the April 17, 2006 investigation date to the November 8, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,107

Violation Final Penalty Total \$4,800

This violation Final Assessed Penalty (adjusted for limits) \$4,800

## Economic Benefit Worksheet

**Respondent** City of Harlingen  
**Case ID No.** 31663  
**Reg. Ent. Reference No.** RN102327509  
**Media** Municipal Solid Waste  
**Violation No.** 4

<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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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	\$30,000	17-Apr-2006	9-Oct-2007	1.5	\$148	\$2,959	\$3,107
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

Estimated cost to build a fence completely enclosing the landfill. The Date Required is the date of the investigation 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

\$30,000

TOTAL

\$3,107

Screening Date 8-Nov-2006

Docket No. 2006-1974-MLM-E

PCW

Respondent City of Harlingen

Policy Revision 2 (September 2002)

Case ID No. 31663

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102327509

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 330.465(b)

Violation Description Failure to submit to the Executive Director a request for revocation of a facility operational permit upon completion of the post-closure care period for the final unit at the facility, as documented during an investigation conducted on April 17, 2006. Specifically, the respondent failed to timely submit a revocation of permit form for MSW Permit No. 169 upon completion of the post-closure care period.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
				x	1%

Matrix Notes Less than 30% of the rule requirement was not met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1 Number of violation days 205

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$100

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$160

This violation Final Assessed Penalty (adjusted for limits) \$160

## Economic Benefit Worksheet

**Respondent** City of Harlingen  
**Case ID No.** 31663  
**Reg. Ent. Reference No.** RN102327509  
**Media** Municipal Solid Waste  
**Violation No.** 5

<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
<b>Delayed Costs</b>							
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	\$300	17-Apr-2006	28-Aug-2006	0.4	\$5	n/a	\$5
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a voluntary revocation of permit form upon completion of the post-closure care period. The Date Required is the date of the investigation and the 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

\$300

**TOTAL**

\$5

Screening Date 8-Nov-2006

Docket No. 2006-1974-MLM-E

PCW

Respondent City of Harlingen

Policy Revision 2 (September 2002)

Case ID No. 31663

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102327509

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code §§ 37.8021 and 330.507(b)

Violation Description Failure to demonstrate acceptable financial assurance for the costs of the post-closure care of the municipal solid waste landfill, as documented during an investigation conducted on April 17, 2006. Specifically, the City failed to demonstrate acceptable financial assurance by the March 21, 2000 date on which all municipal solid waste facilities were required to obtain financial assurance.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 365 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$525

Violation Final Penalty Total \$1,600

This violation Final Assessed Penalty (adjusted for limits) \$1,600

## Economic Benefit Worksheet

**Respondent** City of Harlingen  
**Case ID No.** 31663  
**Reg. Ent. Reference No.** RN102327509  
**Media** Municipal Solid Waste  
**Violation No.** 6

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				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]	\$500	17-Apr-2005	17-Apr-2006	1.0	\$25	\$500	\$525
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 include the facility on a local government financial test and to submit the test to the TCEQ. Date Require is a year prior to the investigation and Final Date is the investigation date.

Approx. Cost of Compliance

\$500

TOTAL

\$525

Screening Date 8-Nov-2006

Docket No. 2006-1974-MLM-E

PCW

Respondent City of Harlingen

Policy Revision 2 (September 2002)

Case ID No. 31663

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102327509

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code §§ 101.4 and 111.201 and Tex. Health & Safety Code § 382.085(a) and (b)

Violation Description

Failure to comply with the general prohibition of outdoor burning in Texas by conducting the unauthorized burning of municipal solid waste and failure to control the discharge of an air contaminant in such concentration and duration as to adversely affect human health or welfare, animal life, vegetation, or property or as to interfere with the normal use and enjoyment of animal life, vegetation, or property, as documented during an investigation conducted on April 17, 2006. Specifically, smoke from a fire at the landfill which began April 15, 2006 and ended April 19, 2006, affected residential areas adjacent to the closed landfill.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants as a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

1

5

Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,600

This violation Final Assessed Penalty (adjusted for limits) \$1,600

## Economic Benefit Worksheet

**Respondent** City of Harlingen  
**Case ID No.** 31663  
**Reg. Ent. Reference No.** RN102327509  
**Media** Municipal Solid Waste  
**Violation No.** 7

<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 \$							
<b>Delayed Costs</b>							
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

N/A Benefit already estimated in violation 1.

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

N/A Benefit already estimated in violation 1.

Approx. Cost of Compliance \$0
TOTAL \$0

## Compliance History

Customer/Respondent/Owner-Operator:	CN600732747 City of Harlingen	Classification: AVERAGE	Rating: 2.02
Regulated Entity:	RN102327508 CITY OF HARLINGEN LANDFILL	Classification: AVERAGE	Site Rating: 2.67
ID Number(s):	MUNICIPAL SOLID WASTE DISPOSAL PERMIT		169
Location:	1.25 MILE E OF STATE HIGHWAY 448 ON FM 108	Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 15 - HARLINGEN		
Date Compliance History Prepared:	December 18, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 18, 2001 to December 18, 2006		

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

Name: Marlin Bullard Phone: (254) 761-3038

### 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)?  | <u>N/A</u> |
| 5. When did the change(s) in ownership occur?  | <u>N/A</u> |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
  - 1 03/16/2005 (345750)
  - 2 04/25/2006 (463499)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - Date: 03/14/2005 (345750)
  - Self Report? NO Classification: Moderate
  - Citation: 30 TAC Chapter 330, SubChapter A 330.4[G]
  - Description: Failure to obtain a registration for a municipal solid waste processing facility.
  - Date: 12/28/2004 (345520)
  - Self Report? NO Classification: Major
  - Citation: 30 TAC Chapter 101, SubChapter A 101.4
  - Description: Failure to control the discharge of an air contaminant in such concentration and of duration as to adversely affect human health or welfare, property or as to interfere with the normal use and enjoyment of property.
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF HARLINGEN  
RN102327509

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2006-1974-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 City of Harlingen ("the City") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 382, TEX. WATER CODE ch. 7, and 30 TEX. ADMIN. CODE chs. 37, 70, 101, 111, and 330. The Executive Director of the TCEQ, through the Enforcement Division, and appear before the Commission and together stipulate that:

1. The City owns and operated a closed municipal solid waste landfill 1.25 miles east of State Highway 448 on Farm-to-Market Road 106 in Harlingen, Cameron County, Texas (the "Site").
2. The Site involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361, and consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that Harlingen is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about October 30, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of twenty-two thousand five hundred sixty dollars (\$22,560.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053 is assessed by the

Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid twenty-two thousand five hundred sixty dollar (\$22,560.00) of the administrative 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 City 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 City submitted a form for the revocation of the City's operational permit on August 28, 2006.
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 City 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 Site, the City is alleged to have:

1. Failed to dispose of municipal solid waste at an authorized site, in violation of 30 TEX. ADMIN. CODE § 330.15(c), as documented during an investigation conducted on April 17, 2006. Specifically, the City disposed of approximately 22,600 cubic yards of waste including mulched material and small amounts of plastics and metals at the closed landfill which is no longer authorized for disposal of additional waste.
2. Failed to maintain a copy of the post-closure maintenance plan at the municipal solid waste site, or an alternate location approved by the Executive Director, in violation of 30 TEX. ADMIN. CODE § 330.125(a), as documented during an investigation conducted on April 17, 2006. Specifically, a copy of the post-closure maintenance plan was not available for review during the investigation at the closed landfill or an alternate location approved by the Executive Director.

3. Failed to correct, as needed, lack of vegetative growth, in violation of 30 TEX. ADMIN. CODE § 330.463(a)(1), as documented during an investigation conducted on April 17, 2006. Specifically, vegetative growth was not being maintained in areas that had been covered by mulch and other waste disposed of on the surface of approximately four acres of the seventy nine acre closed landfill.
4. Failed to control access to a municipal solid waste site by means of artificial barriers, natural barriers, or a combination of both, appropriate to protect human health and safety and the environment, in violation of 30 TEX. ADMIN. CODE § 330.131 and MSW Permit No. 169 Provision E.1. Site Development and Operation, as documented during an investigation conducted on April 17, 2006. Specifically, approximately only 50 feet of the 6,122 foot perimeter were enclosed by a fence.
5. Failed to submit to the Executive Director a request for revocation of a site operational permit upon completion of the post-closure care period for the final unit at the site, in violation of 30 TEX. ADMIN. CODE § 330.465(b), as documented during an investigation conducted on April 17, 2006. Specifically, the City failed to timely submit a revocation of permit form for MSW Permit No. 169 upon completion of the post-closure care period.
6. Failed to demonstrate acceptable financial assurance for the costs of the post-closure care of the municipal solid waste landfill, in violation of 30 TEX. ADMIN. CODE §§ 37.8021 and 330.507(b), as documented during an investigation conducted on April 17, 2006. Specifically, the City failed to demonstrate acceptable financial assurance by the March 21, 2000, date on which all municipal solid waste facilities were required to obtain financial assurance.
7. Failed to comply with the general prohibition of outdoor burning in Texas by conducting the unauthorized burning of municipal solid waste and failure to control the discharge of an air contaminant in such concentration and duration as to adversely affect human health or welfare, animal life, vegetation, or property or as to interfere with the normal use and enjoyment of animal life, vegetation, or property, in violation of 30 TEX. ADMIN. CODE §§ 101.4 and 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b), as documented during an investigation conducted on April 17, 2006. Specifically, smoke from a fire at the landfill which began April 15, 2006 and ended April 19, 2006, affected residential areas adjacent to the closed landfill.

### III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City'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.
2. It is further ordered that the City shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, cease accepting additional wastes at the Site;
  - b. Immediately implement and comply with the attached "Proposed Alternate Plan / Mulch Area Soil Cover Work Plan" prepared by Raba-Kistner Consultants, Inc. on behalf of the City;
  - c. Within 180 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. 2.a. through 2.b. 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."

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

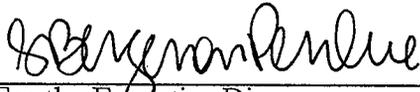
Waste Section Manager  
Harlingen Regional Office  
Texas Commission on Environmental Quality  
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
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 City, or three days after the date on which the Commission mails notice of the Order to the City, 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



\_\_\_\_\_  
For the Executive Director

2/27/08

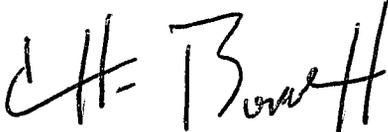
\_\_\_\_\_  
Date

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.



\_\_\_\_\_  
Signature

1-18-08

\_\_\_\_\_  
Date

Chris Boswell

\_\_\_\_\_  
Name (Printed or typed)

Authorized Representative of City of Harlingen

Mayor

\_\_\_\_\_  
Title

**ORDER ATTACHMENT**

PROPOSED ALTERNATE PLAN  
MULCH AREA SOIL COVER WORK PLAN

CLOSED CITY OF HARLINGEN LANDFILL  
MUNICIPAL SOLID WASTE PERMIT NO. 169  
CAMERON COUNTY, TEXAS

Prepared for

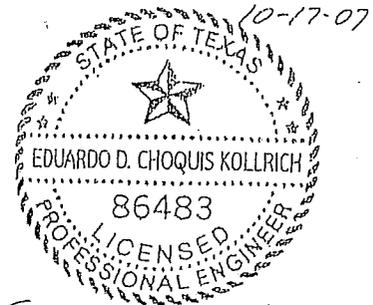
CITY OF HARLINGEN  
Cameron County, Texas

Submitted to

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
Austin, Texas

Prepared by

RABA-KISTNER CONSULTANTS, INC.  
San Antonio, Texas



R-K PROJECT NO. ASF01-304-13

Revised October 17, 2007

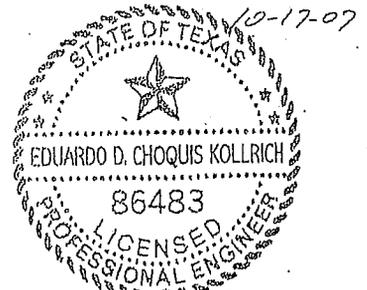
Project No. ASF01-304-13  
October 17, 2007

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## ATTACHMENTS

- Figure 1 – Site Map
- Figure 2 – Existing Topography
- Figure 3 – Proposed Soil Cover Contours
- Figure 4 – Proposed Soil Cover Cross Sections
- Figure 5 – Typical Landfill Gas Vent Detail
- Attachment A – Post-Closure Cost Estimate and Financial Assurance



*Eduardo D. Choquis Kollrich*

## INTRODUCTION

On behalf of our client, City of Harlingen (City), Raba-Kistner Consultants, Inc. (R-K) is pleased to submit for Texas Commission on Environmental Quality (TCEQ) review and approval this Work Plan to construct a soil cover for the approximately 5-acre mulch area located at the Closed City of Harlingen Municipal Solid Waste [MSW] Landfill Permit No. 169. The Work Plan also addresses fencing requirements associated with the closed landfill area.

## BACKGROUND

The permitted area of the Closed City of Harlingen MSW Landfill No. 169 is an approximately 75-acre area with the waste disposal area comprising approximately 39 acres located on the northern portion of the larger permitted area, as depicted in *Figure 1 – Site Plan*. The landfill property is bound on the south by the Arroyo Colorado and associated floodplain, and therefore, the southern portion of the permitted 75 acres is considered non-usable area. The Closed City of Harlingen Landfill No. 169 received waste until closure of the facility in July 1984. In January and March 2000, City of Harlingen received correspondence from TCEQ confirming that the subject facility had completed the required post-closure care period for the filled acreage and requiring that a voluntary permit revocation form be submitted since the permit for the facility had expired or involuntary permit revocation actions will be initiated by TCEQ for the facility. TCEQ investigations of the facility were conducted in December 2004 and April 2006, due to two separate fire incidents within the mulch area. A voluntary permit revocation form was submitted by City of Harlingen on August 28, 2006.

One of the violations indicated in TCEQ Notice of Enforcement Action correspondence dated February 7, 2007, requires the removal and proper disposal of all prohibited waste (estimated by TCEQ to be 22,600 cubic yards of waste including plastics, metals and mulched material) disposed within the closed landfill area. Due to the extremely high costs associated with removal and disposal of the predominantly mulch material at a permitted disposal facility, an alternate plan to construct a soil cover throughout the mulch area is being proposed for consideration by TCEQ. The construction of a soil cover system and the main soil cover components were conceptually discussed with TCEQ staff, City of Harlingen and R-K representatives during a meeting held at TCEQ offices in Austin on March 30, 2007. As discussed with TCEQ during the March 2007 meeting, TCEQ was to issue initial comments regarding the conceptual alternate plan. However, prior to providing initial comments, on June 11, 2007, TCEQ requested the City of Harlingen submit a complete technical version of the alternate plan for TCEQ review.

The purpose of this Work Plan is to outline the proposed soil cover construction, testing, monitoring and documenting activities to be conducted within the approximately 5-acre mulch area located within Closed Landfill No. 169. Upon TCEQ approval, construction activities will be conducted in accordance with this Work Plan, as described in the following paragraphs.

## PROPOSED SOIL COVER CONSTRUCTION

The proposed activities listed below and described in the following paragraphs will be conducted for the construction of soil cover of the approximately 5-acre mulch area. Additionally, R-K will

provide fulltime construction quality assurance (CQA) monitoring and in-situ and laboratory testing during construction of the soil cover.

It is anticipated that construction of the proposed soil cover will include the following components:

- 1) Subgrade preparation/grading
- 2) Infiltration Layer (18-in. thickness)
- 3) Erosion/vegetative layer (6-in. thickness)

#### 1. Subgrade Preparation/Grading

Subgrade preparation/grading activities will be conducted within the mulch area to compact the mulched materials as much as practicable prior to placement of soils, and to prepare the crown and side slopes to the required design grades and elevations in order to maintain proper stormwater drainage characteristics once soil cover is constructed. In accordance with Title 30 of the Texas Administrative Code (TAC) Section (§) 330.456©, the side slopes will be graded not to exceed a 4 Horizontal to 1 Vertical (4H:1V) slope and the crown areas of the soil cover will have a minimum slope of 2% to prevent ponding of precipitation water on the constructed soil cover and a maximum slope of 6%.

Upon completion of subgrade preparation and grading activities, the prepared subgrade surface will be surveyed using a maximum 10,000 ft<sup>2</sup> grid interval to confirm that the subgrade was constructed to required design grades and elevations.

#### 2. Infiltration Layer

The infiltration layer will consist of 18 in. of compacted clayey soils installed as three 6-in. thick compacted lifts. The clayey soils will be compacted with multiple passes of a footed compactor, or similar equipment. The two lower 6-in. lifts will be scarified and moisture-conditioned prior to placement of subsequent lifts to facilitate bonding between the lifts. Preconstruction, in-situ and laboratory testing of clayey soils to be utilized for the construction of the soil cover will be conducted in accordance with the subsections presented below.

Subsequent to installation of the infiltration layer, the area will be surveyed by the Project Surveyor using a maximum 10,000 ft<sup>2</sup> grid interval to confirm that the infiltration layer was constructed to the required grades, elevations and thickness.

#### Preconstruction Testing

Prior to the initiation of construction activities, the geotechnical properties of the clayey material to be utilized for construction of the infiltration layer will be tested for the following parameters to ensure the following criteria are met. A minimum of one set of geotechnical preconstruction testing will be conducted per soil type. Additional testing will be required during construction if a visual change in soil type being used is noted or a change in liquid limit or plasticity index of 10 or more points is detected via laboratory testing.

Preconstruction Testing Requirements

Test	Test Method	Acceptance Criteria	Frequency
Atterberg Limits	ASTM D 4318	Plasticity Index $\geq 15$ Liquid Limit $\geq 30$	One per soil type
Gradation	ASTM D 1140	% Passing # 200 Sieve $\geq 30$	
Moisture-Density Relationship	ASTM D 698 / ASTM D 1557	Values obtained become standards for in-situ testing	
Hydraulic Conductivity	ASTM D 5084	$\leq 1 \times 10^{-5}$ cm/sec	

In-Situ and Laboratory Testing

During construction of the clayey infiltration layer, in-situ field testing will be performed for moisture-density testing at a minimum frequency of one in-situ test per 8,000 ft<sup>2</sup> for each 6-in. thick compacted lift. Hydraulic conductivity testing will be conducted on undisturbed samples collected from the constructed infiltration layer using thin-walled Shelby tubes at a minimum frequency of one test per acre of final cover. Atterberg limits and gradation (percent passing No. 200 sieve) testing will be conducted on bulk samples collected from the corresponding lift being tested at a minimum frequency of one sample per 100,000 ft<sup>2</sup> for each 6-in. thick compacted lift. In-situ and laboratory sampling locations will be properly backfilled using granular bentonite or a mix of clayey soils and granular bentonite.

In-Situ and Laboratory Testing Requirements

Test	Frequency	Min. # of Tests / Samples*	
		6" Lift	18" Layer
In-Situ	1/8,000 ft <sup>2</sup>	28	84
Gradation (% #200)	1/100,000 ft <sup>2</sup>	3	9
Atterberg Limits			
Hydraulic Conductivity	1/acre	2	6

\* Assumes 5-acre area, three 6-in. lifts. (total 18" thick layer)

3. Erosion/Vegetative Layer

The erosion/vegetative layer will consist of 6-in. of soil capable of sustaining vegetation. Subsequent to installation, the top of the erosion/vegetative layer will be surveyed by the Project Surveyor using a pre-determined 10,000-ft<sup>2</sup> grid interval to confirm that the minimum required 6-in. thickness, and final design grades and elevations are obtained.

Upon completion of the erosion/vegetative layer, a seed mixture of grasses native to the Rio Grande Valley area will be applied to the constructed soil cover and the area will be adequately watered to promote vegetation growth throughout the soil cover area.

The existing topographic contours of the mulch area are depicted in *Figure 2 – Existing Topography*. The proposed soil cover elevations are depicted in *Figure 3 – Proposed Soil Cover Contours* and the proposed soil cover cross sections are depicted in *Figure 4 – Proposed Soil Cover Cross Sections*. A full set of construction drawings and associated details will be generated by R-K subsequent to the approval of the Work Plan for use by Construction Contractor(s). The construction drawings will incorporate the conceptual elements of the plan and expand them to provide the additional detail required for construction.

## LANDFILL GAS VENTS

### Determination of Mulch Thickness

Upon TCEQ approval of this Work Plan and prior to mobilization of the construction contractor, five to ten exploratory trenches will be installed within the mulch area to determine the thickness of mulch. Information regarding the thickness of the mulch will be utilized to ensure proper design and installation of the landfill gas vents. The trenches will be installed with a backhoe or tracked excavator in the areas anticipated of having the greatest mulch thickness in order to subsequently install passive vents within these areas of confirmed mulch depths. Care will be taken during exploratory trenching to prevent damage of the underlying Closed Landfill No. 169 final cover.

R-K representatives will be present onsite during installation of the exploratory trenches to monitor the activities, document the findings and monitor for the potential presence of landfill gas (i.e., methane and hydrogen sulfide). Mulch will be excavated from each trench location until final cover soil is encountered at depths estimated to be approximately 8 to 14 ft below the existing mulch surface. Mulch removed during trenching activities will be redeposited into the respective trench and compacted with trenching equipment.

### Installation of Landfill Gas Vents

Subsequent to construction of the soil cover, three to five landfill gas vents will be installed throughout the approximately 5-acre mulch area to facilitate venting of potential landfill gas through the soil cover. The landfill gas vents will be installed at locations where maximum landfill gas readings measurements were obtained during exploratory trenching. At a minimum three vent will be installed, while the anticipated maximum would be five vents distributed at approximately one vent per acre of mulch area soil cover. Vent installation will be performed by a Texas-licensed environmental driller and R-K will be onsite during installation activities to document that the vents are installed in accordance with this Work Plan.

The landfill gas vents will be installed in accordance with typical details depicted in *Figure 5 – Typical Landfill Gas Vent Detail*. As illustrated in *Figure 5*, the vents will be constructed using 4-inch diameter, schedule 80 PVC pipe to maximum estimated depths of 15 ft below the top of the soil cover, fitted with a 10-ft long slotted screen, and completed with a riser extending approximately 4 ft above ground surface and capped with a rotating turbine vent.

Documentation regarding landfill gas vent installation and as-built drawings of the vents will be included in the Final Cover System Evaluation Report (FCSER) to be submitted to TCEQ subsequent to completion of field activities, as described below.

#### REPORTING OF PROPOSED SOIL COVER AND VENT INSTALLATION

Subsequent to completion of construction of the soil cover and installation of the landfill gas vents, R-K will prepare and submit a FCSE to TCEQ for review and approval. The FCSE will be signed and sealed by a professional engineer licensed in Texas and will document the CQA monitoring and testing activities conducted in accordance with this Work Plan. It is anticipated that the FCSE will consist of the following sections:

- FCSE Form summarizing pertinent information to facilitate TCEQ review
- CQA Report detailing construction and testing activities
- Figures and tables summarizing the location of in-situ and laboratory testing conducted
- Complete analytical and field test results from CQA testing
- Description of significant construction problems encountered and resolution of same
- Construction certificates certifying completion of each of the soil cover components
- Statement of compliance that construction and installation activities were conducted in accordance with this Work Plan
- Photographs documenting construction activities
- As-built drawings depicting facility location, prepared subgrade elevations, infiltration layer thicknesses and elevations, erosion/vegetative layer elevations, landfill gas vents, and soil cover cross sections

#### PROPOSED POST-CLOSURE CARE MAINTENANCE

Subsequent to TCEQ approval of the FCSE and closure of the approximate 5-acre mulch area, City of Harlingen will conduct post-closure care maintenance on a semi-annual frequency for a period of 5 years. As required by 30 TAC §330.463(a)(1), City of Harlingen will correct, as needed, erosion of the soil cover, lack of vegetative growth, soil cover subsidence areas, or ponding of water on the soil cover area. Lack of vegetative growth shall be defined as 50% or greater of the 5-acre mulch area without vegetative coverage. Landfill gas monitoring of the landfill gas vents installed within the subject 5-acre area will be conducted at a frequency of once every 6 months throughout the 5-year post closure care period.

In accordance with 30 TAC §330.507(a) and §330.507(b), a cost estimate to conduct post-closure care activities detailed in this Work Plan and required financial assurance documentation are included in *Attachment A – Post-Closure Cost Estimate and Financial Assurance*.

Upon completion of the 5-year post-closure care period, City will submit to TCEQ a new request for voluntary revocation of the permit for the Closed City of Harlingen Landfill No. 169.

#### FENCING

Due to elevated costs associated with fencing of the entire perimeter of the 75-acre permitted property, the City of Harlingen is hereby proposing to install fencing along sections of the

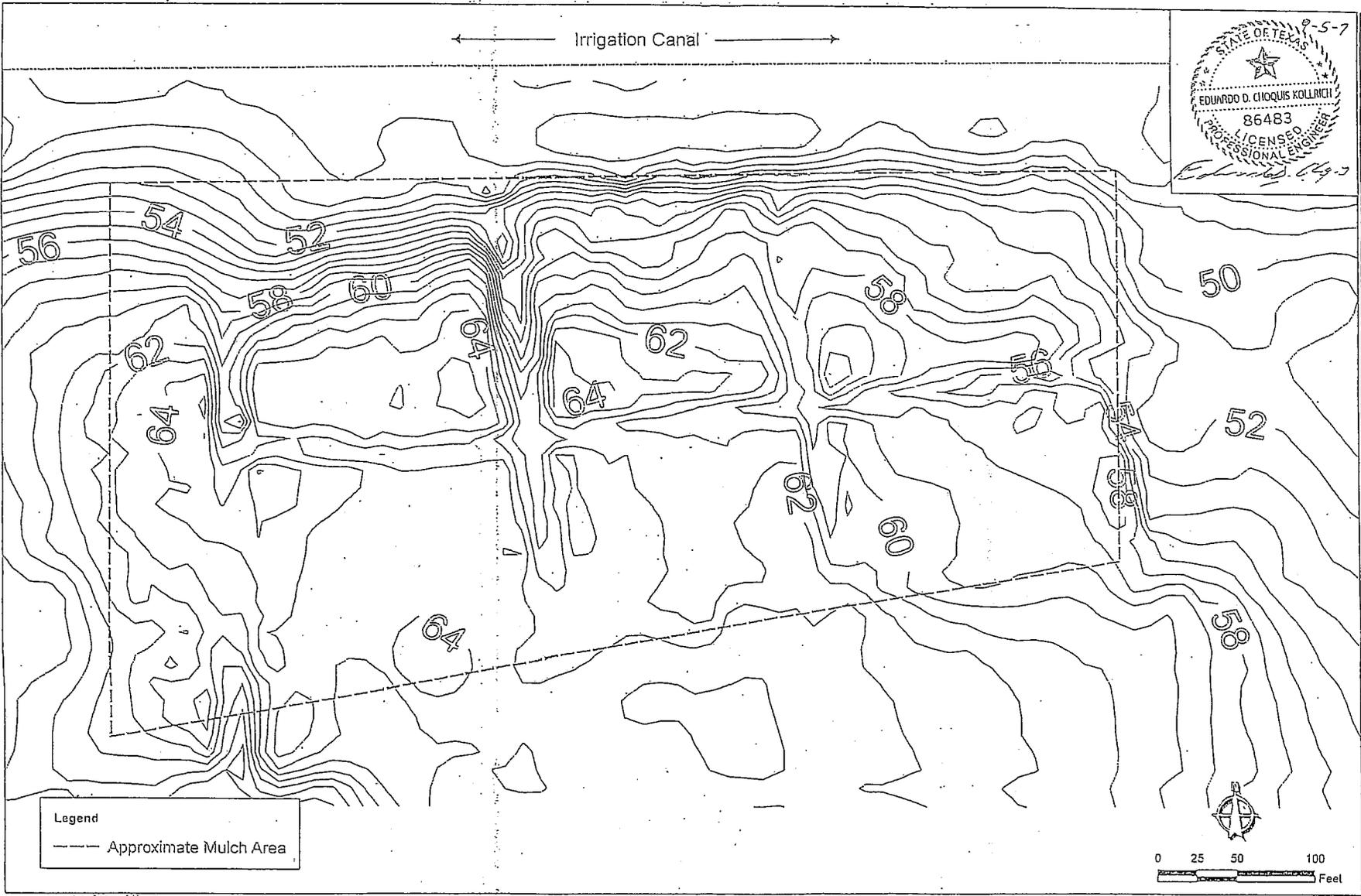
western property boundary that may be accessible to the public, to control public access to the landfill and eliminate unauthorized dumping. City of Harlingen proposes for fencing not to be installed along portions of the property boundaries where public access is restricted by natural or man-made features (i.e., Arroyo Colorado to the south, irrigation canal to the north, and adjacent City-owned property to the east), which are adequate to control access to the property. Fencing to be installed along sections of the western property boundary will consist of 6-ft high chain link fencing, fitted with a locked gate for access/egress by City of Harlingen equipment and personnel to conduct routine maintenance of the irrigation canal located immediately adjacent to the north of the subject facility.

#### SCHEDULE

Subsequent to TCEQ approval of this Work Plan, preparation of construction activities for the final cover system will commence. It is estimated that preparation of construction drawings, bid process by the City of Harlingen, selection of and contracting with Construction Contractor(s) and Surveyor, and scheduling will require approximately 10 to 14 weeks to complete upon approval from the TCEQ Commission. It is estimated that field activities described herein will require approximately four to six weeks for completion. The FCSEER will be submitted to TCEQ for review and approval within three to five weeks following completion of construction activities and receipt of Surveyor as-built drawings.

## FIGURES





STATE OF TEXAS  
 9-5-7  
 EDUARDO D. CHIOQUIS KOLLRICH  
 86483  
 LICENSED  
 PROFESSIONAL ENGINEER  
*Eduardo D. Chioquis Kollrich*

Raba  
Kistner

Revisions:	No.	Date	Description

**EXISTING TOPOGRAPHY**  
 CITY OF HARLINGEN MUNICIPAL SOLID WASTE LANDFILL  
 MSW PERMIT No. 169  
 HARLINGEN, CAMERON COUNTY, TEXAS

Project No.:  
 ASF01-304-13  
 Drawn By: CCL  
 Checked By: EDC  
 Date: September 4, 2007

FIGURE  
 2

Legend  
 --- Approximate Mulch Area

Sources: Data from Guzman & Alonaz  
 Topographic Contours Obtained by R-K on March 16, 2007







**ATTACHMENT A**

**POST-CLOSURE COST ESTIMATE  
FINANCIAL ASSURANCE**

ATTACHMENT A – POST-CLOSURE COST ESTIMATE

5-Acre Mulch Area

City of Harlingen Landfill – MSW Permit No. 169

Harlingen, Cameron County, Texas.

R-K Project No. ASF01-304-13

Item	Unit Cost	Annual		5-Year Period	
		Quantity	Total	Quantity	Total
Engineer semi-annual post closure monitoring	\$ 2,500	2	\$ 5,000	10	\$ 25,000
Documentation of semi-annual monitoring to City and TCEQ	\$ 1,500	2	\$ 3,000	10	\$ 15,000
Minor earthwork to correct water ponding/soil erosion	\$ 5,000	1	\$ 5,000	5	\$ 25,000
Seeding to maintain vegetative cover/growth	\$ 2,500	1	\$ 2,500	5	\$ 12,500
Monitoring/Documentation of maintenance activities	\$ 2,500	1	\$ 2,500	5	\$ 12,500
<b>TOTAL COST ESTIMATES</b>			\$ 18,000		\$ 90,000



## CAPITAL OF THE LOWER RIO GRANDE VALLEY

### Mission Statement:

"Ensure a business-friendly climate focused on economic growth, quality of life and efficient delivery of excellent services to our community."

TEXAS

Glenn Shankie  
Executive Director  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Dear Mr. Shankie:

I am the chief financial officer of City of Harlingen, P.O. Box 2207, Harlingen, TX 78551. This letter is in support of this local government's use of the financial test to demonstrate financial assurance, as specified in 30 Texas Administrative Code (TAC) Chapter 37 (related to Financial Assurances).

1. This local government is the owner or operator of the following facilities for which financial assurance for closure, post closure, or corrective action is demonstrated through the financial test specified in 30 TAC '37.271 (related to Financial Assurances). The current cost estimates covered by the test are shown for each facility: City of Harlingen Municipal Solid Waste Permit 2131, 3700 Block Harrison, Harlingen, Texas. Post Closure Estimate \$1,012,663. City of Harlingen Municipal Solid Waste Permit # 169 (mulch area). Post Closure Estimate \$90,000. City of Harlingen Municipal Solid Waste registration No. MSW-40110, 3700 Block Harrison, Harlingen, Texas. Closure estimate \$53,493.
2. This local government guarantees, through the guarantee specified in 30 TAC '37.281 (related to Financial Assurances), the current closure, post closure, or corrective action cost estimates of the following facilities owned or operated by City of Harlingen. The current cost estimates so guaranteed are shown for each facility: City of Harlingen Municipal Solid Waste Permit 2131, 3700 Block Harrison, Harlingen, Texas. Post Closure Estimate \$1,012,663. City of Harlingen Municipal Solid Waste Permit # 169 (mulch area). Post Closure Estimate \$90,000. City of Harlingen Municipal Solid Waste registration No. MSW-40110, 3700 Block Harrison, Harlingen, Texas. Closure estimate \$53,493.

The fiscal year of this local government ends on September 30, 2006. The figures for the following items marked with an asterisk are derived from this local government's independently audited, year-end financial statements for the latest completed fiscal year, ended September 30, 2006.

### BOND RATING INDICATOR OF FINANCIAL STRENGTH

1. Sum of current cost estimates,  
(total of all cost estimates shown in the paragraphs above) \$1,156,166
2. List the following information on all the outstanding, rated,  
unsecured general obligation bonds issued to the local government:

*\* Recipient Of Keep Texas Beautiful Governor's Achievement Award\**

118 E. Tyler \* P.O. Box 2207 \* Harlingen, Texas 78551

Current bond rating of most recent issuance and name of rating service	<u>Fitch</u> "AAA"
	<u>Standard &amp; Poor's</u> "AAA"
Date of issuance of bond	<u>April 1, 2007</u>
Date of maturity of bond	<u>February 15, 2017</u>

3. Environmental obligations assured by a financial test to demonstrate financial assurance in the following amounts under commission regulations and the Code of Federal Regulations (CFR) or state equivalent rules:

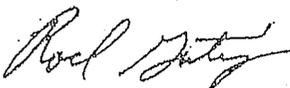
(a) Municipal Solid Waste under 30 TAC Chapter 330 and 40 CFR Part 258	\$ <u>1,156,156</u>
(b) Hazardous waste treatment, storage and disposal facilities under 30 TAC Chapter 335 and 40 CFR Parts 264 and 265	\$ 0
(c) Petroleum underground storage tanks under 30 TAC Chapter 334 and 40 CFR Part 280	\$ 0
(d) Underground Injection Control System facilities under 30 TAC Chapter 331 and 40 CFR Part 144	\$ 0
(e) PCB commercial storage facilities under 40 CFR Part 761	\$ 0
(f) Additional environmental obligations not shown above	\$ 0
Total (a)-(f)	\$ 0

\*4. Total Annual Revenue \$ 46,198,546

Indicate either "yes" or "no" to the following question.

5. Is line 3 divided by line 4 less than or equal to 0.43? Yes

I hereby certify that the wording of this letter is identical to the wording specified in 30 TAC '37.371 as such regulations were constituted on the date shown immediately below. I further certify the following: that the local government's financial statements are prepared in conformity with Generally Accepted Accounting Principles for governments, including conformance with General Accounting Standards Board Statement 18, and its financial statements have been audited by an independent Certified Public Accountant (CPA); that the local government has not operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years; that the local government is not in default on any outstanding general obligations bonds; that the local government does not have outstanding general obligations rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; and that the local government has not received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent CPA.



Roel Gutierrez  
 Director of Finance  
 October 10, 2007

2006 2005 2004 2003  
Special Rev. Funds (revenues)

	2005 Adjustment Factor	2005 After Adjustment	2005 Adjustment Factor	2005 After Adjustment	2006	2005	2004	2003	
Closure Cost					16,856	17,728	19,048	12,647	Tennis Court
					891,751	834,291	818,045	812,192	Hotel/Motel
					174,745	163,621	154,230	126,757	MPO
					23,862	14,767	9,963	1,776	Catastrophe/Emergency Relief
					154,618	61,498	103,715	94,092	DID
					1,282,127	587,089	394,942	753,548	Special Investigation
Post Closure Cost	1.021	\$994,123	1.029	\$1,012,663	1,337	48,758	69,763	87,740	Law Enforcement Grant
Post Closure Cost Mulch Area MSW-40110	1.021	\$51,985	1.029	\$53,493	40,578	46,739	58,440	59,185	Communication Center
					245,522	250,859	57,800	0	COPS/UHP
					-	12,765	416	1,940	La Placita District
TOTAL		\$1,036,108		\$1,156,156	371,194	181,641	128,434	112,571	Los Indios International Bridge
					254,759	184,769			Infrastructure Fund
					27,258	75,759			Lon Ci Hill Library
General					1,025,789	1,762,954	1,950,443	1,833,356	CDBG
Spec Rev					4,520,396	4,243,238	3,765,239	3,897,807	Total
Debt Service									
Capital Projects									
Enterprise					41,726	50,477	9,470	10,007	Petition Paving
Enterprise Non-Operating					45,218	132	56	61	Capital Improvement
Internal Service Non-Operating					30,464	142,554	10,793	10,265	Street Improvement
							0	747	GO Bond Projects
Total Revenues		\$43,042,504		\$46,198,546	910	494	204	223	CO Projects series 1995
					2,241	1,242	515	2,500	CO Projects series 1996
Total closure cost divided by total revenues		0.0241		0.0250	22,694	16,768	67,307	6,625	CO Projects series 1999
					43,442	524,082	10,132	11,955	CO Projects series 2001
		\$3,735,042		\$3,156,942	128,307				GO Projects series 2002
		-0.1745%		0.0964%	96,455				GO Projects series 2004
Instructions for calculation:					37,276				GO Projects series 2006
					448,733	735,749	88,478	42,383	Total