

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1752-MSW-E **TCEQ ID:** RN103049557 **CASE NO.:** 34894

RESPONDENT NAME: City of Wichita Falls

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Wichita Falls Landfill, 10984 Wiley Road, Wichita Falls, Wichita County</p> <p>TYPE OF OPERATION: Type I municipal solid waste landfill</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 2, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Cynthia McKaughan, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0735; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: The Honorable Lanham Lyne, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, Texas 76307 Mr. Darron Leiker, City Manager, City of Wichita Falls, P.O. Box 1431, Wichita Falls, Texas 76307 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: September 12, 2007</p> <p>Date of NOE Relating to this Case: October 3, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>Failure to comply with the approved Site Operating Plan. Specifically, the Respondent failed to document leachate compliance levels by providing calculated compliance points within the leachate risers at seven sump risers located within the landfill [30 TEX. ADMIN. CODE § 330.121(a) and MSW Permit No. 1428A, Part III, Attachment 15, Section 2.2.1].</p>	<p>Total Assessed: \$15,100</p> <p>Total Deferred: \$3,020 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$12,080</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Within 60 days after the effective date of this Agreed Order, ensure that all sensor equipment installed is calibrated to determine compliance from a known compliance point within the leachate riser, and a leachate compliance point of 12 inches or 30 centimeters above the liner must be established and signed or sealed by a Texas registered professional engineer for all sump risers at the Facility; and</p> <p>b) Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): 1428A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

TCEQ

DATES	Assigned	8-Oct-2008	Screening	31-Oct-2007	EPA Due	
	PCW	4-Nov-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Wichita Falls
Reg. Ent. Ref. No.	RN103049557
Facility/Site Region	3-Abilene
Major/Minor Source	Major

CASE INFORMATION				
Enf./Case ID No.	34894	No. of Violations	1	
Docket No.	2007-1752-MSW-E	Order Type	1660	
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Marlin Bullard	
Multi-Media		EC's Team	Enforcement Team 7	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$10,000
---	-------------------	----------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	51% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$5,100
--------------------	-----------------	--------------------------------	---------

Notes: Enhancement for one NOV with same or similar violations, three NOVs with dissimilar violations, and two 1660 orders.

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.

Total EB Amounts	\$554	0% Enhancement*	<i>Subtotal 6</i>	\$0
Approx. Cost of Compliance	\$10,000	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$15,100
-----------------------------	-----------------------	----------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	<i>Adjustment</i>	\$0
---	----	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$15,100

STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$15,100
-----------------------------------	-------------------------------	----------

DEFERRAL	20%	Reduction	<i>Adjustment</i>	-\$3,020
-----------------	-----	-----------	-------------------	----------

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

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$12,080
------------------------	----------

Screening Date 31-Oct-2007	Docket No. 2007-1752-MSW-E	PCW
Respondent City of Wichita Falls	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34894	<i>PCW Revision September 19, 2007</i>	
Reg. Ent. Reference No. RN103049557		
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 (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 51%

>> **Repeat Violator (Subtotal 3)**

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes Enhancement for one NOV with same or similar violations, three NOVs with dissimilar violations, and two 1660 orders.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 51%

Screening Date 31-Oct-2007 **Docket No.** 2007-1752-MSW-E **PCW**
Respondent City of Wichita Falls *Policy Revision 2 (September 2002)*
Case ID No. 34894 *PCW Revision September 19, 2007*
Reg. Ent. Reference No. RN103049557
Media [Statute] Municipal Solid Waste
Enf. Coordinator Marlin Bullard

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 330.121(a) and MSW Permit No. 1428A, Part III, Attachment 15, Section 2.2.1
Violation Description Failed to comply with the approved Site Operating Plan, as documented during an investigation on September 12, 2007. Specifically, the Respondent failed to document leachate compliance levels by providing calculated compliance points within the leachate risers at seven sump risers located within the landfill.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				50%
Potential	x			

OR

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events: 2 49 Number of violation days
mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$10,000

Two monthly events are recommended from the September 12, 2007 investigation date to the October 31, 2007 screening date.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount: \$554	Violation Final Penalty Total: \$15,100
This violation Final Assessed Penalty (adjusted for limits) \$15,100	

Economic Benefit Worksheet

Respondent: City of Wichita Falls
Case ID No.: 34894
Reg. Ent. Reference No.: RN103049557
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	\$10,000	12-Sep-2007	27-Jun-2008	0.8	\$26	\$528	\$554
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 update the leachate monitoring system to bring it into compliance. 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

\$10,000

TOTAL

\$554

Compliance History

Customer/Respondent/Owner-Operator:	CN600129316	City of Wichita Falls	Classification: AVERAGE	Rating: 5.27																								
Regulated Entity:	RN103049557	CITY OF WICHITA FALLS LANDFILL	Classification: POOR	Site Rating: 47.14																								
ID Number(s):	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">AIR OPERATING PERMITS</td> <td style="width: 20%;">ACCOUNT NUMBER</td> <td style="width: 30%;">WH0002X</td> </tr> <tr> <td>AIR OPERATING PERMITS</td> <td>PERMIT</td> <td>2379</td> </tr> <tr> <td>PETROLEUM STORAGE TANK REGISTRATION</td> <td>REGISTRATION</td> <td>51111</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>ACCOUNT NUMBER</td> <td>WH0002X</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>74429</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>AFS NUM</td> <td>4848500211</td> </tr> <tr> <td>MUNICIPAL SOLID WASTE DISPOSAL</td> <td>PERMIT</td> <td>1428A</td> </tr> <tr> <td>MUNICIPAL SOLID WASTE PROCESSING</td> <td>REGISTRATION</td> <td>100021</td> </tr> </table>				AIR OPERATING PERMITS	ACCOUNT NUMBER	WH0002X	AIR OPERATING PERMITS	PERMIT	2379	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	51111	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	WH0002X	AIR NEW SOURCE PERMITS	PERMIT	74429	AIR NEW SOURCE PERMITS	AFS NUM	4848500211	MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	1428A	MUNICIPAL SOLID WASTE PROCESSING	REGISTRATION	100021
AIR OPERATING PERMITS	ACCOUNT NUMBER	WH0002X																										
AIR OPERATING PERMITS	PERMIT	2379																										
PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	51111																										
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	WH0002X																										
AIR NEW SOURCE PERMITS	PERMIT	74429																										
AIR NEW SOURCE PERMITS	AFS NUM	4848500211																										
MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	1428A																										
MUNICIPAL SOLID WASTE PROCESSING	REGISTRATION	100021																										
Location:	10984 WILEY RD, WICHITA FALLS, TX, 76308		Rating Date: September 01 07 Repeat Violator: NO																									
TCEQ Region:	REGION 03 - ABILENE																											
Date Compliance History Prepared:	December 20, 2007																											
Agency Decision Requiring Compliance History:	Enforcement																											
Compliance Period:	December 20, 2002 to December 20, 2007																											

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.

- | | |
|--|----------------------------|
| Effective Date: 05/24/2004 | ADMINORDER 2002-0965-MSW-E |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 330, SubChapter F 330.111
30 TAC Chapter 330, SubChapter F 330.114 | |
| Description: Failed to construct the leachate risers for Cell 13 and Cell 14 to a 3 to 1 slope as per the approved SOP and SDP. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 330, SubChapter F 330.123 | |
| Description: Failure to ensure proper tarping and securement of loads entering the landfill. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 330, SubChapter F 330.111
30 TAC Chapter 330, SubChapter F 330.114 | |
| Description: Failed to inspect all incoming loads at the entrance to the landfill as per the approved Site Operation Plan (SOP) and Site Development Plan (SDP). | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 330, SubChapter F 330.111
30 TAC Chapter 330, SubChapter F 330.114 | |
| Description: Failed to prevent storm water from draining into the leachate risers of Cell 13 and Cell 14 as per the approved SOP and SDP. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 330, SubChapter F 330.111
30 TAC Chapter 330, SubChapter F 330.114 | |
| Description: Failed to prevent 12 inches of head above the liner or risers for Cell 11, Cell 12, Cell 13, and Cell 14 as per the approved SOP and SDP. | |
| Effective Date: 06/26/2006 | ADMINORDER 2006-0027-WQ-E |
| Classification: Major | |
| Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(a) | |
| Description: Failure to obtain authorization to discharge storm water associated with industrial activity to | |

water in the state.

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	06/09/2003	(60548)
2	02/18/2004	(258760)
3	01/10/2005	(345340)
4	07/15/2005	(397778)
5	11/10/2005	(435269)
6	12/18/2006	(532981)
7	07/06/2007	(560932)
8	10/05/2007	(573687)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 10/30/2004 (397778)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.60(a)

Description: Failure to obtain a registration for a Scrap Tire Storage Site.

Date: 12/15/2004 (339396)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.60(a)

Description: Failure to obtain a registration for a Scrap Tire Storage Site.

Date: 11/09/2005 (435269)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter F 330.116

Description: Failure to have a fence constructed on the permit boundary.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter F 330.122

Description: Failure to have all landfill markers installed.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter F 330.136(b)

Description: Failure to conduct a paint filter tests on a load of special waste from Vetrotex.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter F 330.138

Description: Failure to screen the waste load from Vetrotex to ensure compliance with approved special waste requirements and to screen for liquid waste which was found within the load.

Date: 07/05/2007 (560932)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 330, SubChapter F 330.133(g)

Description: Failure to complete the daily cover log. In January, 2007, multiple entries required in the daily cover log were incomplete.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter F 330.138

Description: Failure to screen treated/untreated medical wastes for disposal.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter F 330.114

Description: Failure to establish a compliance level for the maximum head of leachate in all sump risers within the #1428 Landfill. Failure to establish monitoring equipment compliance levels for maximum leachate levels within the sump risers in the #1428 Landfill. Attachment 4 of the SOP directs the leachate level requirements.

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 WICHITA FALLS
RN103049557**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2007-1752-MSW-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 Wichita Falls ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a type I municipal solid waste landfill at 10984 Wiley Road in Wichita Falls, Wichita County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about October 8, 2007.
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 Fifteen Thousand One Hundred Dollars (\$15,100) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Twelve Thousand Eighty Dollars (\$12,080) of the administrative penalty and Three Thousand Twenty Dollars (\$3,020) is deferred contingent upon the City's timely and

satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the 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 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.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have failed to comply with the approved Site Operating Plan, in violation of 30 TEX. ADMIN. CODE § 330.121(a) and MSW Permit No. 1428A, Part III, Attachment 15, Section 2.2.1, as documented during an investigation conducted on September 12, 2007. Specifically, the City failed to document leachate compliance levels by providing calculated compliance points within the leachate risers at seven sump risers located within the 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. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Wichita Falls, Docket No. 2007-1752-MSW-E" to:

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

2. It is further ordered that the City shall undertake the following technical requirements:

- a. Within 60 days after the effective date of this Agreed Order, ensure that all sensor equipment installed is calibrated to determine compliance from a known compliance point within the leachate riser, and a leachate compliance point of 12 inches or 30 centimeters above the liner must be established and signed or sealed by a Texas registered professional engineer for all sump risers at the Facility, in accordance with 30 TEX. ADMIN. CODE § 330.121(a) and MSW Permit No. 1428A, Part III, Attachment 15, Section 2.2.1. Documentation showing completion shall be submitted to:

Waste Section Manager
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

- b. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

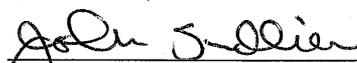
Waste Section Manager
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

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 Facility 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

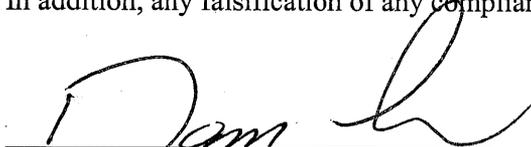
5/11/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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



Signature

3-3-08
Date

Damon Leiker

Name (Printed or typed)
Authorized Representative of
City of Wichita Falls

City Manager

Title

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

