

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: November 17, 2006</p> <p>Date of NOE Relating to this Case: January 17, 2007</p> <p>Background Facts:</p> <p>This case was referred to the Litigation Division on May 25, 2007. The EDPRP was filed and mailed August 6, 2007. According to the return receipt "green card," the Respondent received notice of the EDPRP on August 13, 2007. A draft Default Order was mailed to the Respondent on March 12, 2008. The Respondent remitted the full amount of the administrative penalty, but never signed an Agreed Order. The Respondent has not filed an answer.</p> <p>MSW:</p> <p>Failed to prevent the unauthorized disposal of municipal solid waste. Specifically, approximately 2,560 cubic yards of municipal solid waste, brush, three scrap tires, tire threads, rubbish, putrescible waste and empty containers of paint and paint thinner were disposed of at the Site [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p>Total Assessed: \$5,000</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>Total Paid to General Revenue: \$5,000</p> <p>The Respondent has paid the administrative penalty in full.</p> <p>Site Compliance History Classification:</p> <p><input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification:</p> <p><input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action Taken:</p> <p>The Executive Director recognizes the Respondent no longer owns the site.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

DATES	Assigned	22-Jan-2007		
	PCW	21-May-2007	Screening	28-Feb-2007
		EPA Due		

RESPONDENT/FACILITY INFORMATION			
Respondent	Jesus Marroquin		
Reg. Ent. Ref. No.	RN105109128		
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	32827	No. of Violations	1
Docket No.	2007-0301-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Michael Meyer
Multi-Media		EC's Team	EnforcementTeam 8
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$5,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$0
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Notes: There were no NOVs or orders which were issued to the Respondent during the previous five years.

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

Good Faith Effort to Comply	0% Reduction	<i>Subtotal 5</i>	\$0
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	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	\$216	0% Enhancement*	<i>Subtotal 6</i>	\$0
Approx. Cost of Compliance	\$33,280	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$5,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE		<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

<i>Final Penalty Amount</i>	\$5,000
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$5,000
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DEFERRAL		Reduction	<i>Adjustment</i>	
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited cases.

PAYABLE PENALTY	\$5,000
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Screening Date 28-Feb-2007

Docket No. 2007-0301-MSW-E

PCW

Respondent Jesus Marroquin

Policy Revision 2 (September 2002)

Case ID No. 32827

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105109128

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

There were no NOVs or orders which were issued to the Respondent during the previous five years.

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

Screening Date 28-Feb-2007

Docket No. 2007-0301-MSW-E

PCW

Respondent Jesus Marroquin

Policy Revision 2 (September 2002)

Case ID No. 32827

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105109128

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

Violation Number

Rule Cite(s)

Violation Description: Failed to prevent the unauthorized disposal of municipal solid waste, as documented on November 17, 2006. Specifically, approximately 2,560 cubic yards of municipal solid waste consisting of wooden pallets, carpet, asphalt roofing shingles, mattresses, yard waste, brush, three scrap tires, tire treads, rubbish, putrescible waste and empty containers of paint and paint thinner were disposed of at the Site.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes: Human health and the environment has been exposed to significant amounts of pollutants as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

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

Violation Base Penalty

Two monthly events are recommended from the November 17, 2006 investigation to the date the property was sold (January 5, 2007).

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 Jesus Marroquin
Case ID No. 32827
Reg. Ent. Reference No. RN105109128
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$33,280	17-Nov-2006	5-Jan-2007	0.1	\$216	n/a	\$216
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of disposal based on an estimated 2,560 cubic yards times \$13 a cubic yard for disposal. The Date Required is the investigation date and the Final Date is the date the property was sold.

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

\$33,280

TOTAL

\$216

Compliance History

Customer/Respondent/Owner-Operator:	CN603120999 MARROQUIN, JESUS	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN105109128 JESUS MARROQUIN DISPOSAL SITE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER	455150151
Location:	W SIDE OF WESTERN RD, APPROX 0.25 MI N OF INTX OF WESTERN RD & RM 1924.	Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 15 - HARLINGEN		
Date Compliance History Prepared:	March 09, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 10, 2002 to March 09, 2007		

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

Name: Michael Meyer Phone: (512) 239-4492

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 01/17/2007 (531553)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JESUS MARROQUIN;
RN105109128

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2007-0301-MSW-E

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

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

FINDINGS OF FACT

1. Mr. Marroquin owned an abandoned sand and gravel pit located on the west side of Western Road, approximately 0.25 miles north of the intersection of Western Road and FM Road 1924, near Mission, Hidalgo County, Texas (the "Site").
2. The Site involves the management and the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on November 17, 2006, a TCEQ Harlingen Regional Office investigator documented that Mr. Marroquin failed to prevent the unauthorized disposal of municipal solid waste. Specifically, approximately 2,560 cubic yards of municipal solid waste consisting of wooden pallets, carpet, asphalt roofing shingles, mattresses, yard waste, brush, three scrap tires, tire threads, rubbish, putrescible waste and empty containers of paint and paint thinner were disposed of at the Site.
4. Mr. Marroquin received notice of the violation on or about January 22, 2007.
5. The Executive Director recognizes that Mr. Marroquin sold the Site on January 5, 2007.

6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Jesus Marroquin" (the "EDPRP") in the TCEQ Chief Clerk's office on August 6, 2007.
7. By letter dated August 6, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Marroquin with notice of the EDPRP. According to the return receipt "green card," Mr. Marroquin received notice of the EDPRP on August 13, 2007, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Mr. Marroquin received notice of the EDPRP, provided by the Executive Director. Mr. Marroquin failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Marroquin is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Marroquin failed to prevent the unauthorized disposal of municipal solid waste, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Marroquin with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 8, Mr. Marroquin failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Marroquin and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Marroquin for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of five thousand dollars (\$5,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Marroquin is assessed an administrative penalty in the amount of five thousand dollars (\$5,000.00) for violations of the TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Marroquin's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Jesus Marroquin; Docket No. 2007-0301-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Mr. Marroquin.
4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Marroquin if the Executive Director determines that Mr. Marroquin has not complied with one or more of the terms or conditions in this Order.
5. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

Jesus Marroquin

Docket No. 2007-0301-MSW-E

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6. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Jesus Marroquin
Docket No. 2007-0301-MSW-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF ANNA M. COX

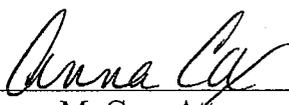
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Jesus Marroquin” (the “EDPRP”) was filed with the Office of the Chief Clerk on August 6, 2007.

The EDPRP was mailed to Mr. Marroquin at his last known address on August 6, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Marroquin received notice of the EDPRP on August 13, 2007, as evidenced by the signature on the card.

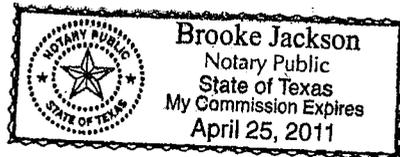
More than 20 days have elapsed since Mr. Marroquin received notice of the EDPRP. Mr. Marroquin failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Anna M. Cox, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 12th day of March, A.D., 2008.





Notary Signature