

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0697-MSW-E **TCEQ ID:** RN102334570 **CASE NO.:** 35798

RESPONDENT NAME: City of Kingsville

| | | |
|--|---|--|
| 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 Kingsville Landfill, 348 East County Road 2130, Kingsville, Kleberg County</p> <p>TYPE OF OPERATION: Municipal solid waste ("MSW") Type 1 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 November 17, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Sharon Blue, SEP Coordinator, Litigation Division, MC 175, (512) 239-2223 TCEQ Enforcement Coordinator: Ms. Trina Grieco, Enforcement Division, Enforcement Team 5, MC R-13, (210) 403-4006; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: The Honorable Sam Fugate, Mayor, City of Kingsville, P.O. Box 1265, Kingsville, Texas 78364 Ms. Dianne Leubert, Solid Waste Superintendent, City of Kingsville, P.O. Box 1265, Kingsville, Texas 78364 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: February 8 and 14, 2008</p> <p>Date of NOV/NOE Relating to this Case: April 14, 2008 (NOE)</p> <p>Background Facts: This was one routine investigation with two actual site visit dates.</p> <p>WASTE</p> <p>1) Failure to maintain at least 12 inches of suitable earthen material, not previously mixed with garbage, rubbish, or other solid waste. Specifically, the intermediate area exhibited severe erosion [30 TEX. ADMIN. CODE § 330.165(c) and MSW Disposal Permit 235B Section 4.22, Intermediate Cover].</p> <p>2) Failure to submit a permit modification application to incorporate the 2006 rule revisions to 30 TEX. ADMIN. CODE §§ 330.301 through 330.307, in accordance with 30 TEX. ADMIN. CODE § 305.70(1). Specifically, the Respondent failed to submit a permit modification application to revise the Groundwater and Surface Water Protection Plan to address interim controls for intermediate cover by September 23, 2006 [30 TEX. ADMIN. CODE § 330.301].</p> <p>3) Failure to maintain the collection, drainage, and/or storage units as designed, and restore and repair the drainage system in the event of washout or failure. Specifically, it was observed that the berm on the north boundary of Section 1 had been breached, and the presence of ponded water was observed [30 TEX. ADMIN. CODE § 330.305(e)(1)].</p> <p>4) Failure to maintain and operate the</p> | <p>Total Assessed: \$12,540</p> <p>Total Deferred: \$2,508 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$10,032</p> <p>Total Paid (Due) to General Revenue: \$0</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order:</p> <p>i. Maintain six inches of daily cover; and</p> <p>ii. Control windblown litter on the working face and pick up windblown litter throughout the Facility daily.</p> <p>b. Within 15 days after the effective date of this Agreed Order:</p> <p>i. Submit a complete permit modification application;</p> <p>ii. Repair erosion and maintain at least 12 inches of intermediate cover; and</p> <p>iii. Repair the berm on the north boundary of Section 1, drain ponded water and maintain berms for proper surface water drainage.</p> <p>c. Respond completely and adequately, as determined by the TCEQ, to all letter requests for information concerning the permit modification application within 30 days after the date of such letters, or by any other deadline specified in writing; and</p> <p>d. Within 30 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 Nos. 2.a.i. through 2.b.iii.</p> |

| | | |
|--|--|--|
| <p>windblown solid waste. Specifically, windblown litter was observed coming from the active face and an excessive amount of windblown litter was observed throughout the Facility [30 TEX. ADMIN. CODE § 330.139 and MSW Disposal Permit 235B Section 4.9, Control of Windblown Litter].</p> <p>5) Failure to apply six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste at the end of each operating day to control disease vectors, fires, odors, windblown litter or waste. Specifically, municipal solid waste was visibly protruding through the areas that had previously received daily cover [30 TEX. ADMIN. CODE § 330.165(a) and MSW Disposal Permit 235B Section 4.22, Daily Cover].</p> | | |
|--|--|--|

Additional ID No(s): 235B

Attachment A

Docket Number: 2008-0697-MSW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

| | |
|---------------------------|--|
| Respondent: | City of Kingsville |
| Penalty Amount: | Ten Thousand Thirty-Two Dollars (\$10,032) |
| SEP Offset Amount: | Ten Thousand Thirty-Two Dollars (\$10,032) |
| Type of SEP: | Custom (pre-approved concept) |
| Location of SEP: | Kleberg County |

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to perform a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall hold a cleanup event to remove and properly dispose of or recycle used tires throughout the city. The Respondent shall ensure that the event:

- occurs after normal work hours or on weekend days if respondent’s personnel are used, or in the alternative, a contractor may be used during regular hours;
- offers to the public a no-cost option to dispose of tires; and
- if advertised, that the event is advertised in a newspaper of large circulation in the geographic area and that the advertisement includes a statement that the project is being performed as a SEP.

The Respondent shall utilize a contractor to haul and properly dispose of or recycle the collected tires. SEP monies will be used for the direct cost of the project and no portion shall be spent on administrative costs.

The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations. The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of used tires that can leach chemicals into the soil and water, as well as help rid the community of the dangers and health threats associated with mosquitoes that can carry West Nile virus. The cleanup will also help prevent release of harmful chemicals into the atmosphere from potential tire fires.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent understands that this SEP may cost more than the Offset Amount to complete.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin implementation of the SEP. The Respondent shall complete the project within one year after the effective date of this Agreed Order.

3. Reporting

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above. If the project is completed on or before 90 days of the effective date of the Agreed Order, the Respondent may submit a Final Report in lieu of a Progress Report.

B. Final Report

Within 60 days after completion of the project, the Respondent shall submit a Final Report to the TCEQ which includes:

1. An itemized list of expenditures and costs incurred with receipts, copies of checks, or other verifying documentation attached;
2. The total amount of costs incurred;
3. A statement of quantifiable environmental benefits;
4. Number of tires collected;
5. A copy of manifests showing proper disposal or recycling of the collected tires;
5. Map showing specific location of the collection location;
6. Photographs of the project; and
7. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

4. Additional Information and Access

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

5. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to “Texas Commission on Environmental Quality” and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

7. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the “Clean Texas” (or any successor) program. Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

8. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 8, 2008

| | | | | | |
|--------------|----------|-------------|-----------|-------------|---------|
| DATES | Assigned | 22-Apr-2008 | | | |
| | PCW | 20-Aug-2008 | Screening | 28-Apr-2008 | EPA Due |

| | | | |
|--|--------------------|--------------------|-------|
| RESPONDENT/FACILITY INFORMATION | | | |
| Respondent | City of Kingsville | | |
| Reg. Ent. Ref. No. | RN102334570 | | |
| Facility/Site Region | 14-Corpus Christi | Major/Minor Source | Major |

| | | | |
|-------------------------|-----------------------|-------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 35798 | No. of Violations | 5 |
| Docket No. | 2008-0697-MSW-E | Order Type | 1660 |
| Media Program(s) | Municipal Solid Waste | Enf. Coordinator | Trina Grieco |
| Multi-Media | | EC's Team | Enforcement Team,5 |
| Admin. Penalty \$ | Limit Minimum | \$0 | Maximum |
| | | | \$10,000 |

Penalty Calculation Section

| | | |
|---|-------------------|----------------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | <i>Subtotal 1</i> | \$9,500 |
|---|-------------------|----------------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|-----------------|--------------------------------|----------------|
| Compliance History | 32% Enhancement | <i>Subtotals 2, 3, & 7</i> | \$3,040 |
|---------------------------|-----------------|--------------------------------|----------------|

Notes: The Respondent has had one 1660 Agreed Order, two NOV's for same or similar violations and one NOV for dissimilar violations.

| | | | | |
|--------------------|----|----------------|-------------------|------------|
| 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 EDPRP/Settlement Offer |
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with x) |

Notes: The Respondent does not meet the good faith criteria.

| | | | |
|----------------------------|-----------------|-----------------------------------|------------|
| | 0% Enhancement* | <i>Subtotal 6</i> | \$0 |
| Total EB Amounts | \$246 | *Capped at the Total EB \$ Amount | |
| Approx. Cost of Compliance | \$5,000 | | |

| | | |
|-----------------------------|-----------------------|-----------------|
| SUM OF SUBTOTALS 1-7 | <i>Final Subtotal</i> | \$12,540 |
|-----------------------------|-----------------------|-----------------|

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

| | |
|-----------------------------|-----------------|
| <i>Final Penalty Amount</i> | \$12,540 |
|-----------------------------|-----------------|

| | | |
|-----------------------------------|-------------------------------|-----------------|
| STATUTORY LIMIT ADJUSTMENT | <i>Final Assessed Penalty</i> | \$12,540 |
|-----------------------------------|-------------------------------|-----------------|

| | | | |
|-----------------|---------------|-------------------|-----------------|
| DEFERRAL | 20% Reduction | <i>Adjustment</i> | -\$2,508 |
|-----------------|---------------|-------------------|-----------------|

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 | \$10,032 |
|------------------------|-----------------|

Screening Date 28-Apr-2008

Docket No. 2008-0697-MSW-E

PCW

Respondent City of Kingsville

Policy Revision 2 (September 2002)

Case ID No. 35798

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN102334570

Media [Statute] Municipal Solid Waste

Enf. Coordinator Trina Grieco

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>) | 2 | 10% |
| | Other written NOVs | 1 | 2% |
| Orders | Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>) | 1 | 20% |
| | 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% |

Please Enter Yes or No

| | | | |
|-------|---|----|----|
| 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) 32%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

The Respondent has had one 1660 Agreed Order, two NOVs for same or similar violations and one NOV for dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 32%

| | | | | |
|--------------------------------|-----------------------|------------------------------------|-----------------|------------|
| Screening Date | 28-Apr-2008 | Docket No. | 2008-0697-MSW-E | PCW |
| Respondent | City of Kingsville | Policy Revision 2 (September 2002) | | |
| Case ID No. | 35798 | PCW Revision March 8, 2008 | | |
| Reg. Ent. Reference No. | RN102334570 | | | |
| Media [Statute] | Municipal Solid Waste | | | |
| Enf. Coordinator | Trina Grieco | | | |

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 330.165(c) and MSW Disposal Permit 235B Section 4.22, Intermediate Cover

Violation Description
Failed to maintain at least 12 inches of suitable earthen material, not previously mixed with garbage, rubbish, or other solid waste, as documented during an investigation conducted on February 8 and 14, 2008. Specifically, the intermediate area exhibited severe erosion.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes
Human health or the environment will or could be exposed to significant amounts of pollutants as a result of this violation.

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 | x |
| semiannual | <input type="text"/> |
| annual | <input type="text"/> |
| single event | <input type="text"/> |

Violation Base Penalty

One quarterly event is recommended from the February 8, 2008 investigation date to the April 28, 2008 screening date.

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 Kingsville
Case ID No. 35798
Reg. Ent. Reference No. RN102334570
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 |
|--------------------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| <small>No commas or \$</small> | | | | | | | |

Delayed Costs

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|-----------|---------------|-------------|-----|----------------|---------------|-----------|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | \$500 | 8-Feb-2008 | 25-Dec-2008 | 0.9 | \$1 | \$29 | \$31 |
| 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 apply and maintain intermediate cover. 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)

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

\$500

TOTAL

\$31

Screening Date 28-Apr-2008 **Docket No.** 2008-0697-MSW-E **PCW**
Respondent City of Kingsville *Policy Revision 2 (September 2002)*
Case ID No. 35798 *PCW Revision March 8, 2008*
Reg. Ent. Reference No. RN102334570
Media [Statute] Municipal Solid Waste
Enf. Coordinator Trina Grieco

Violation Number

Rule Cite(s)

Violation Description
 Failed to submit a permit modification application to incorporate the 2006 rule revisions to 30 Tex. Admin. Code §§ 330.301 through 330.307, in accordance with 30 Tex. Admin. Code § 305.70(1), as documented during an investigation conducted on February 8 and 14, 2008. Specifically, the Respondent failed to submit a permit modification application to revise the Groundwater and Surface Water Protection Plan to address interim controls for intermediate cover by September 23, 2006.

Base Penalty

>> **Environmental, Property and Human Health Matrix**

| OR | Release | Harm | | | Percent |
|----|-----------|----------------------|----------------------|----------------------|---------------------------------|
| | | Major | Moderate | Minor | |
| | Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="0%"/> |
| | Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> | |

>> **Programmatic Matrix**

| Falsification | Major | Moderate | Minor | Percent |
|----------------------|-------------------------------------|----------------------|----------------------|----------------------------------|
| <input type="text"/> | <input checked="" type="checkbox"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="25%"/> |

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="checkbox"/> |
| 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 Kingsville
Case ID No.: 35798
Reg. Ent. Reference No.: RN102334570
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 |
|--------------------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| <small>No commas or \$</small> | | | | | | | |

Delayed Costs

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|-----------|---------------|-------------|-----|----------------|---------------|-----------|
| 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 | \$2,000 | 8-Feb-2008 | 25-Dec-2008 | 0.9 | \$88 | n/a | \$88 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to submit an administratively and technically complete permit modification application in compliance with 30 Tex. Admin. Code §§ 330.301 through 330.307. Date required is the investigation date and final date is the estimated date of compliance.

Avoided Costs

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

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

\$2,000

TOTAL

\$88

| | | |
|--|--|---------------------------------------|
| Screening Date 28-Apr-2008 | Docket No. 2008-0697-MSW-E | PCW |
| Respondent City of Kingsville | <i>Policy Revision 2 (September 2002)</i> | |
| Case ID No. 35798 | <i>PCW Revision March 8, 2008</i> | |
| Reg. Ent. Reference No. RN102334570 | | |
| Media [Statute] Municipal Solid Waste | | |
| Enf. Coordinator Trina Grieco | | |
| Violation Number <input type="text" value="3"/> | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 330.305(e)(1) | |
| Violation Description | Failed to maintain the collection, drainage, and/or storage units as designed, and restore and repair the drainage system in the event of washout or failure, as documented during an investigation conducted on February 8 and 14, 2008. Specifically, it was observed that the berm on the north boundary of Section 1 had been breached, and the presence of ponded water was observed. | |
| Base Penalty | | <input type="text" value="\$10,000"/> |

>> Environmental, Property and Human Health Matrix

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

>> 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

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

Violation Base Penalty

| | |
|---|---|
| Economic Benefit (EB) for this violation | Statutory Limit Test |
| Estimated EB Amount <input type="text" value="\$62"/> | Violation Final Penalty Total <input type="text" value="\$1,320"/> |
| This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,320"/> | |

Economic Benefit Worksheet

Respondent City of Kingsville
Case ID No. 35798
Reg. Ent. Reference No. RN102334570
Media Municipal Solid Waste
Violation No. 3

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| <small>No commas or \$</small> | | | | | | | |

Delayed Costs

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|-----------|---------------|-------------|-----|----------------|---------------|-----------|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | \$1,000 | 8-Feb-2008 | 25-Dec-2008 | 0.9 | \$3 | \$59 | \$62 |
| 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 repair the berm on the north boundary of Section 1, drain the ponded water and to ensure that the berms are maintained for proper surface water drainage. 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)

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

\$62

| | | |
|---|---|---|
| Screening Date 28-Apr-2008 | Docket No. 2008-0697-MSW-E | PCW |
| Respondent City of Kingsville | | <small>Policy Revision 2 (September 2002)</small> |
| Case ID No. 35798 | | <small>PCW Revision March 8, 2008</small> |
| Reg. Ent. Reference No. RN102334570 | | |
| Media [Statute] Municipal Solid Waste | | |
| Enf. Coordinator Trina Grieco | | |
| Violation Number <input type="text" value="4"/> | | |
| Rule Cite(s) 30 Tex. Admin. Code § 330.139 and MSW Disposal Permit 235B Section 4.9, Control of Windblown Litter | | |
| Violation Description | Failed to maintain and operate the working face in a manner to control windblown solid waste, as documented during an investigation conducted on February 8 and 14, 2008. Specifically, windblown litter was observed coming from the active face and an excessive amount of windblown litter was observed throughout the Facility. | |
| | Base Penalty | <input type="text" value="\$10,000"/> |

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

| | | | | | | | | | | | | | | |
|---|-------------------------------------|--------------------------|---------|----------------------|-----------|-------------------------------------|------------|----------------------|--------|----------------------|--------------|----------------------|--|--|
| Number of Violation Events <input type="text" value="1"/> | <input type="text" value="80"/> | Number of violation days | | | | | | | | | | | | |
| <table border="1" style="border-collapse: collapse;"> <tr><td style="padding: 2px;">daily</td><td style="width: 30px;"><input type="text"/></td></tr> <tr><td style="padding: 2px;">monthly</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">quarterly</td><td style="text-align: center;"><input checked="" type="checkbox"/></td></tr> <tr><td style="padding: 2px;">semiannual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">annual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">single event</td><td><input type="text"/></td></tr> </table> | daily | <input type="text"/> | monthly | <input type="text"/> | quarterly | <input checked="" type="checkbox"/> | semiannual | <input type="text"/> | annual | <input type="text"/> | single event | <input type="text"/> | | Violation Base Penalty <input type="text" value="\$1,000"/> |
| daily | <input type="text"/> | | | | | | | | | | | | | |
| monthly | <input type="text"/> | | | | | | | | | | | | | |
| quarterly | <input checked="" type="checkbox"/> | | | | | | | | | | | | | |
| semiannual | <input type="text"/> | | | | | | | | | | | | | |
| annual | <input type="text"/> | | | | | | | | | | | | | |
| single event | <input type="text"/> | | | | | | | | | | | | | |

One quarterly event is recommended from the February 8, 2008 investigation date to the April 28, 2008 screening date.

| | |
|---|--|
| Economic Benefit (EB) for this violation | Statutory Limit Test |
| Estimated EB Amount <input type="text" value="\$22"/> | Violation Final Penalty Total <input type="text" value="\$1,320"/> |
| This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,320"/> | |

Economic Benefit Worksheet

Respondent: City of Kingsville
Case ID No.: 35798
Reg. Ent. Reference No.: RN102334570
Media: Municipal Solid Waste
Violation No.: 4

| | |
|------------------|-----------------------|
| 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 | \$500 | 8-Feb-2008 | 25-Dec-2008 | 0.9 | \$22 | n/a | \$22 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to ensure that windblown litter is controlled on the working face and is picked up daily throughout the Facility. 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

\$500

TOTAL

\$22

Screening Date 28-Apr-2008 **Docket No.** 2008-0697-MSW-E **PCW**
Respondent City of Kingsville *Policy Revision 2 (September 2002)*
Case ID No. 35798 *PCW Revision March 8, 2008*
Reg. Ent. Reference No. RN102334570
Media [Statute] Municipal Solid Waste
Enf. Coordinator Trina Grieco

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 330.165(a) and Permit 235B Section 4.22, Daily Cover

Violation Description
 Failed to apply six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste at the end of each operating day to control disease vectors, fires, odors, windblown litter or waste, as documented during an investigation conducted on February 8 and 14, 2008. Specifically, municipal solid waste was visibly protruding through the areas that had previously received daily cover.

Base Penalty

>> **Environmental, Property and Human Health Matrix**

| Release | Harm | | | Percent |
|-----------|----------------------|-------------------------------------|----------------------|----------------------------------|
| | Major | Moderate | Minor | |
| Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="25%"/> |
| Potential | <input type="text"/> | <input checked="" type="checkbox"/> | <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 or the environment will or could be exposed to significant amounts of pollutants as a result of this violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

One quarterly event is recommended from the February 8, 2008 investigation date to the April 28, 2008 screening date.

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 Kingsville
Case ID No. 35798
Reg. Ent. Reference No. RN102334570
Media Municipal Solid Waste
Violation No. 5

| | |
|-------------------------|------------------------------|
| 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) | \$1,000 | 8-Feb-2008 | 25-Dec-2008 | 0.9 | \$44 | n/a | \$44 |

Notes for DELAYED costs

Estimated cost of applying six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste at the end of each operating day. 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

\$1,000

TOTAL

\$44

Compliance History

| | | | |
|---|---|-------------------------|---|
| Customer/Respondent/Owner-Operator: | CN600674246 City of Kingsville | Classification: AVERAGE | Rating: 3.10 |
| Regulated Entity: | RN102334570 CITY OF KINGSVILLE LANDFILL | Classification: AVERAGE | Site Rating: 2.88 |
| ID Number(s): | MUNICIPAL SOLID WASTE DISPOSAL | PERMIT | 235B |
| | AIR NEW SOURCE PERMITS | ACCOUNT NUMBER | KJ0007F |
| | STORMWATER | PERMIT | TXR05L074 |
| Location: | 348 E COUNTY ROAD 2130, KINGSVILLE, TX, 78363 | | Rating Date: 9/1/2007 Repeat Violator: NO |
| TCEQ Region: | REGION 14 - CORPUS CHRISTI | | |
| Date Compliance History Prepared: | April 22, 2008 | | |
| Agency Decision Requiring Compliance History: | Enforcement | | |
| Compliance Period: | April 22, 2003 to April 22, 2008 | | |

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

Name: Cynthia McKaughan Phone: (512) 239-0735

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? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

- Effective Date: 01/12/2008 ADMINORDER 2007-0765-WQ-E
- Classification: Minor
- Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(c)
- Rqmt Prov: Permit Provision III.A.3. PERMIT
- Description: Failed to certify the non-storm water discharge survey within 180 days of the submittal of the Notice of Intent ("NOI")
- Classification: Moderate
- Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(c)
- Rqmt Prov: Permit Provision III.A.7. PERMIT
- Description: Failed to perform the Annual Comprehensive Site Compliance Evaluation ("ACSCCE") and submit the report in 2004, 2005, and 2006

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 | 08/20/2003 | (149376) |
| 2 | 08/25/2003 | (150530) |
| 3 | 02/03/2004 | (260233) |
| 4 | 01/10/2006 | (437154) |
| 5 | 04/20/2007 | (554331) |
| 6 | 04/14/2008 | (617534) |

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

- Date: 08/26/2003 (150530)
- Self Report? NO Classification: Moderate
- Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
- Rqmt Prov: PERMIT MSGP - TXR05L074

Description: Failure to conduct a comprehensive site compliance evaluation for 2002.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 Rqmt Prov: PERMIT MSGP - TXRO5L074
 Description: Failure to conduct hazardous metal monitoring in the year 2002 or qualify for a waiver from hazardous metal monitoring requirements.
 Date: 02/13/2007 (534427)
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(5)
 Rqmt Prov: PERMIT MSGP, Part III, Section E.2(c)(1)
 Description: Failure to at all times ensure that the facility and all of its systems of collection, treatment and disposal are properly operated and maintained in a manner that minimizes the discharge of excessive pollutants.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 330, SubChapter D 330.139(2)
 Rqmt Prov: PERMIT SOP Sec 1.12 Control of Windblown Materi
 Description: Failure to collect litter within, and around the landfill site weekly or more often as necessary to minimize unhealthy, unsafe, or unsightly conditoions. During the investigation, windblown litter was observed outside of the perimeter fence on FM 2130.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 330, SubChapter D 330.165(a)
 Rqmt Prov: PERMIT SOP Section 1.25.1 Daily Cover
 Description: Failure to ensure that cover is placed daily on the top and side of the working area. During the investigation the active face lacked the required six inches of well compacted daily cover.
 Failure to ensure that cover is placed daily on the top and side of the working area. During the investigation the active face I
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 330, SubChapter D 330.165(c)
 Rqmt Prov: PERMIT SOP Section 1.25.2, Intermediate Cover
 Description: Failure to maintain at least twelve inches of suitable earthen material, not previously mixed with garbage, rubbish, or other solid waste. During the investigation the intermediate area exhibited severe erosion. (Note: Section 1.25.2 cited in the Permit Description is a previous version of the SOP, and was brought forward from a previous investigation. The Section in the May 15, 2007 SOP is 4.22)
 Date: 10/05/2007 (572122)
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Rqmt Prov: PERMIT TPDES General Permit No. TXR050000
 Description: Failure to develop measures to address erosion.

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 KINGSVILLE
RN102334570**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0697-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 Kingsville ("the Respondent") 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 Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a municipal solid waste ("MSW") Type 1 landfill at 348 East County Road 2130 in Kingsville, Kleberg County, Texas (the "Facility").
2. The Facility involves or involved the management of MSW as defined in TEX. HEALTH & SAFETY Code ch. 361.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 19, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twelve Thousand Five Hundred Forty Dollars (\$12,540) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Two Thousand Five Hundred Eight Dollars (\$2,508) is deferred contingent upon the Respondent'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

Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Ten Thousand Thirty-Two Dollars (\$10,032) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

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 Respondent 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 Respondent 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 Respondent is alleged to have:

1. Failed to maintain at least 12 inches of suitable earthen material, not previously mixed with garbage, rubbish, or other solid waste, in violation of 30 TEX. ADMIN. CODE § 330.165(c) and MSW Disposal Permit 235B Section 4.22, Intermediate Cover as documented during an investigation conducted on February 8 and 14, 2008. Specifically, the intermediate area exhibited severe erosion.
2. Failed to submit a permit modification application to incorporate the 2006 rule revisions to 30 TEX. ADMIN. CODE §§ 330.301 through 330.307, in accordance with 30 TEX. ADMIN. CODE § 305.70(1), in violation of 30 TEX. ADMIN. CODE § 330.301, as documented during an investigation conducted on February 8 and 14, 2008. Specifically, the Respondent failed to submit a permit modification application to revise the Groundwater and Surface Water Protection Plan to address interim controls for intermediate cover by September 23, 2006.
3. Failed to maintain the collection, drainage, and/or storage units as designed, and restore and repair the drainage system in the event of washout or failure, in violation of 30 TEX. ADMIN. CODE § 330.305(e)(1), as documented during an investigation conducted on February 8 and 14, 2008. Specifically, it was observed that the berm on the north boundary of Section 1 had been breached, and the presence of ponded water was observed.

4. Failed to maintain and operate the working face in a manner to control windblown solid waste, in violation of 30 TEX. ADMIN. CODE § 330.139 and MSW Disposal Permit 235B Section 4.9, Control of Windblown Litter, as documented during an investigation conducted on February 8 and 14, 2008. Specifically, windblown litter was observed coming from the active face and an excessive amount of windblown litter was observed throughout the Facility.
5. Failed to apply six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste at the end of each operating day to control disease vectors, fires, odors, windblown litter or waste, in violation of 30 TEX. ADMIN. CODE § 330.165(a) and Permit 235B Section 4.22, Daily Cover, as documented during an investigation conducted on February 8 and 14, 2008. Specifically, MSW was visibly protruding through the areas that had previously received daily cover.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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 Kingsville, Docket No. 2008-0697-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. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Ten Thousand Thirty-Two Dollars (\$10,032) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately after the effective date of this Agreed Order:

- i. Maintain six inches of daily cover, in accordance with 30 TEX. ADMIN. CODE § 330.165(a) and MSW Disposal Permit 235B Section 4.22, Daily Cover;
 - ii. Control windblown litter on the working face and pick up windblown litter throughout the Facility daily, in accordance with 30 TEX. ADMIN. CODE § 330.139 and MSW Disposal Permit 235B Section 4.9, Control of Windblown Litter;
- b. Within 15 days after the effective date of this Agreed Order:
- i. Submit a complete permit modification application that complies with 30 TEX. ADMIN. CODE §§ 330.301 through 330.307 to:

Municipal Solid Waste Permits Section
Waste Permits Division, MC 124
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711
 - ii. Repair erosion and maintain at least 12 inches of intermediate cover, in accordance with 30 TEX. ADMIN. CODE § 330.165(c) and Permit 235B Section 4.22, Intermediate Cover;
 - iii. Repair the berm on the north boundary of Section 1, drain ponded water and maintain berms for proper surface water drainage, in accordance with 30 TEX. ADMIN. CODE § 330.305(e);
- c. Respond completely and adequately, as determined by the TCEQ, to all letter requests for information concerning the permit modification application within 30 days after the date of such letters, or by any other deadline specified in writing; and
- d. Within 30 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 Nos. 3.a.i. through 3.b.iii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

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
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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.
5. If the Respondent 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 Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent 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.
8. 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.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SEP-02-2008 TUE 10:25 AM

FAX NO.

P. 02

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sadler
For the Executive Director

11/3/2008
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.

Dianne Leubert
Signature

8-28-08
Date

Dianne Leubert
Name (Printed or typed)
Authorized Representative of
City of Kingsville

Solid Waste Superintendent
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.

Attachment A

Docket Number: 2008-0697-MSW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Kingsville
Penalty Amount: Ten Thousand Thirty-Two Dollars (\$10,032)
SEP Offset Amount: Ten Thousand Thirty-Two Dollars (\$10,032)
Type of SEP: Custom (pre-approved concept)
Location of SEP: Kleberg County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to perform a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall hold a cleanup event to remove and properly dispose of or recycle used tires throughout the city. The Respondent shall ensure that the event:

- occurs after normal work hours or on weekend days if respondent's personnel are used, or in the alternative, a contractor may be used during regular hours;
- offers to the public a no-cost option to dispose of tires; and
- if advertised, that the event is advertised in a newspaper of large circulation in the geographic area and that the advertisement includes a statement that the project is being performed as a SEP.

The Respondent shall utilize a contractor to haul and properly dispose of or recycle the collected tires. SEP monies will be used for the direct cost of the project and no portion shall be spent on administrative costs.

The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations. The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of used tires that can leach chemicals into the soil and water, as well as help rid the community of the dangers and health threats associated with mosquitoes that can carry West Nile virus. The cleanup will also help prevent release of harmful chemicals into the atmosphere from potential tire fires.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent understands that this SEP may cost more than the Offset Amount to complete.

2. **Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin implementation of the SEP. The Respondent shall complete the project within one year after the effective date of this Agreed Order.

3. **Reporting**

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above. If the project is completed on or before 90 days of the effective date of the Agreed Order, the Respondent may submit a Final Report in lieu of a Progress Report.

B. Final Report

Within 60 days after completion of the project, the Respondent shall submit a Final Report to the TCEQ which includes:

1. An itemized list of expenditures and costs incurred with receipts, copies of checks, or other verifying documentation attached;
2. The total amount of costs incurred;
3. A statement of quantifiable environmental benefits;
4. Number of tires collected;
5. A copy of manifests showing proper disposal or recycling of the collected tires;
5. Map showing specific location of the collection location;
6. Photographs of the project; and
7. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

4. **Additional Information and Access**

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

5. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

7. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

8. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.

