

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2004-0706-MSW-E TCEQ ID: RN104154562 CASE NO.: 15774**  
**RESPONDENT NAME: RICARDO AGUERO DBA AGUERO'S TRUCKING**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> One mile north of the intersection of Highway 359 and J. C. Perez on the east side of J. C. Perez Road, Oilton, Webb County</p> <p><b>TYPE OF OPERATION:</b> Solid waste transportation business</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 29, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492  <b>TCEQ Regional Contact:</b> Ms. Rose Luna-Pirtle, Laredo Regional Office, MC R-16, (956) 753-4052  <b>Respondent:</b> Mr. Ricardo Aguero, Owner, Aguero's Trucking, P. O. Box 430057, Laredo, Texas 78043  <b>Respondent's Attorney:</b> Mr. Ernesto Davila, Jr., Law Offices of Ernesto Davila, Jr., P. O. Box 662, Laredo, Texas 78042-0662</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> November 13, 2003</p> <p><b>Date of NOE Relating to this Case:</b> March 2, 2004</p> <p><b>Background Facts:</b> The EDPRP was filed on November 10, 2004. The Respondent filed an answer on December 2, 2004, and the case was referred to SOAH. The Respondent signed an agreed order on September 23, 2008.</p> <p><b>Current Compliance Status:</b> The Respondent is no longer in business. The waste was removed from the site by the landowners in response to a companion enforcement action.</p> <p><b>MSW</b> Transported and disposed of municipal solid waste in an unauthorized landfill [30 TEX. ADMIN. CODE § 330.15 (formerly § 330.5)].</p>	<p><b>Total Assessed:</b> \$27,500</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$27,500</p> <p>The Respondent has paid the administrative penalty in full.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Action(s) Taken:</b> The waste has been removed from the site.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (09/02)

PCW Revision 2/10/2004

<b>DATES</b>	
PCW	19-Sep-2008
Screening	18-May-2004
Priority Due	15-Sep-2004
EPA Due	
<b>RESPONDENT INFORMATION</b>	
Respondent	Ricardo Aguero dba Aguero's Trucking
Respondent/Site ID No(s)	RN104154562
Facility/Site Region	16 - Laredo
Major/Minor Source	Minor
<b>CASE INFORMATION</b>	
Enf./Case ID No(s)	15774
Docket No.	2004-0706-MSW-E
No. Violations	1
Case Priority	3
Order Type	1660 without deferral
Enf. Coordinator	Michael Meyer
EC's Team	Enforcement Team 6
Media Program(s)	Municipal Solid Waste
Admin. Penalty \$ Limit	Minimum \$0 Maximum \$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY** (Sum of violation base penalties) Subtotal 1

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

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

**Compliance History** 0% Enhancement Subtotals 2, 3 & 7

Notes

**Culpability** 0% Enhancement Subtotal 4

No

Notes

**Good Faith Effort to Comply** 0% Reduction Subtotal 5

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
None of the above	X	(mark with small x)

Notes

**Economic Benefit** 0% Enhancement\* Subtotal 6

\$1,260	Total EB Amounts	*Capped at the Total EB \$ Amount
\$1,050	Approx. Cost of Compliance	=

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment

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

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL** Deferral  Reduction Adjustment

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

Notes

**PAYABLE PENALTY**

**Screening Date** 18-May-2004  
**Respondent** Ricardo Aguero dba Aguero's Trucking  
**Case ID No.** 15774

**Docket Number** 2004-0706-MSW-E  
**Policy Revision 2 (09/02)**  
**PCW Revision 2/10/2004**

**Respondent/Site ID No.** RN104154562

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Michael Meyer

**Site Address**

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

**Adjustment Percentage (Subtotal 2)**

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

Select Yes/No

**Adjustment Percentage (Subtotal 3)**

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

Select High, Average or Poor

**Adjustment Percentage (Subtotal 7)**

**Compliance History Summary**

**Compliance History Notes**

**Total Adjustment Percentage (Subtotals 2, 3 & 7)**

<b>Screening Date</b> 18-May-04	<b>Docket Number</b> 2004-0706-MSW-E	<b>PCW</b>
<b>Respondent</b> Ricardo Aguero dba Aguero's Trucking		Policy Revision 2 (09/02)
<b>Case ID No.</b> 15774		PCW Revision 2/10/2004
<b>Respondent/Site ID No.</b> RN104154562		
<b>Media [Statute]</b> Municipal Solid Waste		
<b>Enf. Coordinator</b> Michael Meyer		
<b>Violation Number</b> 1		
<b>Primary Rule Cite</b>	30 Tex. Admin. Code § 330.5	
<b>Secondary Cite(s)</b>		
<b>Violation Description</b>	Respondent hauled municipal solid waste to and disposed of municipal solid waste at Alan and Yolanda Black's caliche pit, an unauthorized landfill on the following dates: 5/17/99, 5/20/99, 5/18/97, 8/6/97, 8/21/97, 8/22/97, 8/23/97, 6/9/99, 5/2/01, 5/16/01, and 5/17/01.	
	<b>Base Penalty</b>	\$10,000
» Environmental, Property and Human Health Matrix		
	<b>Harm</b>	
	Release	Major      Moderate      Minor
<b>OR</b>	Actual	x
	Potential	
	<b>Percent</b>	25%
» Programmatic Matrix		
	Falsification	Major      Moderate      Minor
<b>OR</b>		
		<b>Percent</b>
<b>Matrix Notes</b>	As a result of these violations, human health and the environment were exposed to significant amounts of pollutants that did not exceed levels protective of human health and environmental receptors. Respondent disposed of approximately 7,000 cubic yards of material in the unauthorized landfill.	
	<b>Adjustment</b>	-\$7,500
	<b>Base Penalty Subtotal</b>	\$2,500
<b>Violation Events</b>		
	<b>Number of Violation Events</b>	11
<i>mark only one; use small x</i>	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x
	<b>Violation Base Penalty</b>	\$27,500
<b>Events Notes</b>	During the investigation conducted on 11/13/03, the invoices that were reviewed documented that Mr. Aguero delivered waste to the unauthorized site on eleven days.	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>
<b>Estimated EB Amount (\$)</b>	\$1,260	<b>Violation Final Penalty total</b> \$27,500
<b>This Violation Final Assessed Penalty (adjusted for limits)</b>		\$27,500

### Economic Benefit Worksheet

**Respondent** Ricardo Aguero dba Aguero's Trucking  
**ID Number(s)** 15774  
**Media [Statute]** Municipal Solid Waste  
**Violation Number** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0
Notes for DELAYED costs							

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,050	17-May-1997	2-May-2001	4.0	\$210	\$1,050	\$1,260
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Respondent avoided the tipping fees for seven loads municipal solid waste at an authorized landfill. Economic benefit was estimated by multiplying the estimated number of loads dumped) by an estimated cost of \$150 per load.

Approx Cost of Compliance

**TOTAL**

## Compliance History

Customer/Respondent/Owner-Operator:	CN601028552    AGUERO RICARDO	Classification: AVERAGE BY DEFAULT	Rating: 3.010
Regulated Entity:	RN104154582    AGUEROS TRUCKING	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):			
Location:	INTERSECTION OF BOB BULLOCK AND HWY 359 2 MI EAST, LAREDO, TX, 78045	Rating Date: 9/1/03 Repeat Violator: NO	
TCEQ Region:	REGION 16 - LAREDO		
Date Compliance History Prepared:	May 18, 2004		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 18, 1999 to May 17, 2004		

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

Name: Sherry Smith Phone: 512/239-0572

### Site Compliance History Components

- |  |            |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes        |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No         |
| 3. If Yes, who is the current owner?   | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)?  | <u>N/A</u> |
| 5. When did the change(s) in ownership occur?  | <u>N/A</u> |

### Components (Multimedia) for the Site :

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

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 03/10/2004 (262373)

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

N/A

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  
RICARDO AGUERO DBA  
AGUERO'S TRUCKING,  
RN104154562

§  
§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2004-0706-MSW-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Ricardo Aguero dba Aguero's Trucking ("Mr. Aguero") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Aguero represented by Mr. Ernesto Davila, Jr., of the Law Offices of Ernesto Davila, Jr., appear before the Commission and together stipulate that:

1. At the time of the violations, Mr. Aguero owned and operated a solid waste transportation business which transported and disposed of municipal solid waste at an unauthorized landfill located one mile north of the intersection of Highway 359 and J. C. Perez on the east side of J. C. Perez Road, Oilton, Webb County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Commission and Mr. Aguero agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Aguero is subject to the Commission's jurisdiction.
4. Mr. Aguero received notice of the violations alleged in Section II ("Allegations") on or about March 7, 2004.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Aguero of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of twenty-seven thousand five hundred dollars (\$27,500.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Aguero has paid twenty-seven thousand five hundred dollars (\$27,500.00) of the administrative penalty.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Aguero 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 Mr. Aguero 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

Mr. Aguero is alleged to have violated 30 TEX. ADMIN. CODE § 330.5<sup>1</sup> by transporting and disposing of municipal solid waste in an unauthorized landfill on May 18, 1997, August 6, 1997, August 21, 1997, August 22, 1997, August 23, 1997, May 17, 1999, May 20, 1999, June 9, 1999, May 2, 2001, May 16, 2001, and May 17, 2001, as documented on November 13, 2003.

## III. DENIALS

Mr. Aguero generally denies each allegation in Section II ("Allegations").

---

<sup>1</sup> Effective March 27, 2006, 30 TEX. ADMIN. CODE § 330.5 was recodified as 30 TEX. ADMIN. CODE § 330.15.

#### IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Aguero pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Aguero'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Ricardo Aguero dba Aguero's Trucking, Docket No. 2004-0706-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 provisions of this Agreed Order shall apply to and be binding upon Mr. Aguero. Mr. Aguero 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.
3. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Aguero 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.
4. 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.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Aguero, or three days after the date on which the Commission mails notice of the Order to Mr. Aguero, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Ricardo Aguero dba Aguero's Trucking  
DOCKET NO. 2004-0706-M3W-E  
Page 4

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

*[Handwritten Signature]*

For the Executive Director

12/9/2008  
Date

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

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

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

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

*[Handwritten Signature]*  
Signature

9/23/08  
Date

RICARDO AGUERO  
Name (Printed or typed)

Owner  
Title

Authorized representative of  
Ricardo Aguero dba Aguero's Trucking