

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1601-MLM-E TCEQ ID: RN104806344 CASE NO.: 34771
RESPONDENT NAME: JOHNNY GORE

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 9678 Wingfield Drive, Lumberton, Hardin County</p> <p>TYPE OF OPERATION: Unauthorized disposal site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There is one complaint, alleging that the Respondent was burning trash on his property. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: One complaint has been received but the complainant has not indicated a desire to contest this action or speak at agenda. 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 10, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Ms. Kimberly Morales, Air Enforcement Section, MC R-12, (733) 422-8938 TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 899-8705 Respondent: Mr. Johnny Gore, 9678 Wingfield Drive, Lumberton, Texas 77657 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:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: March 1, 2007</p> <p>Date of Investigation Relating to this Case: March 23, 2007</p> <p>Date of NOE Relating to this Case: September 7, 2007</p> <p>Background Facts: The EDPRP was filed on March 10, 2008 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on March 12, 2008, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>MLM:</p> <p>1. Failed to comply with the prohibition on outdoor burning [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2. Failed to dispose of municipal solid waste at an authorized facility [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p>Total Assessed: \$13,580</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$13,580</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately cease accepting and/or disposing of any additional waste and all unauthorized burning at the Site. 2. Within 120 days, ensure that all unauthorized waste, including burned material, at the Site is removed and properly disposed of at an authorized facility. 3. Within 135 days, submit written certification to demonstrate compliance with the above Ordering Provisions.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

DATES	Assigned	10-Sep-2007	Screening	4-Oct-2007	EPA Due	
	PCW	18-Jan-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	Johnny Gore		
Reg. Ent. Ref. No.	RN104806344		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	34771	No. of Violations	2	
Docket No.	2007-1601-MLM-E	Order Type	1660	
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Dana Shuler	
Multi-Media	Air	EC's Team	Enforcement Team 7	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$8,500
---	-------------------	----------------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5% Enhancement	Subtotals 2, 3, & 7	\$425
--------------------	----------------	--------------------------------	--------------

Notes: The Respondent received one NOV with same or similar violations.

Culpability	No	0% Enhancement	Subtotal 4	\$0
-------------	----	----------------	-------------------	------------

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$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.

Total EB Amounts	\$19,993	50% Enhancement*	Subtotal 6	\$4,250
Approx. Cost of Compliance	\$270,405	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$13,175
-----------------------------	-----------------------	-----------------

OTHER FACTORS AS JUSTICE MAY REQUIRE	3%	Adjustment	\$405
---	----	-------------------	--------------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended adjustment to capture the avoided cost associated with the violation.

Final Penalty Amount	\$13,580
-----------------------------	-----------------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$13,580
-----------------------------------	-------------------------------	-----------------

DEFERRAL	0% Reduction	Adjustment	\$0
-----------------	--------------	-------------------	------------

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$13,580
------------------------	-----------------

Screening Date 4-Oct-2007

Docket No. 2007-1601-MLM-E

PCW

Respondent Johnny Gore

Policy Revision 2 (September 2002)

Case ID No. 34771

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN104806344

Media [Statute] Municipal Solid Waste

Enf. Coordinator Dana Shuler

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> 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 received one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 4-Oct-2007	Docket No. 2007-1601-MLM-E	PCW	
Respondent Johnny Gore		<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34771		<i>PCW Revision September 19, 2007</i>	
Reg. Ent. Reference No. RN104806344			
Media [Statute] Municipal Solid Waste			
Enf. Coordinator Dana Shuler			
Violation Number	1		
Rule Cite(s)	30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)		
Violation Description	Failed to comply with the prohibition on outdoor burning, as documented during an investigation conducted on March 23, 2007. Specifically, approximately 15 cubic yards of burned shingles, metal, construction debris, plastic, vegetative debris, and other wastes were observed at the site .		
	Base Penalty	\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Release	Harm	
		Major Moderate Minor	
	Actual	<input type="text"/> <input type="text"/> <input checked="" type="text"/>	
	Potential	<input type="text"/> <input type="text"/> <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	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as result of this violation.		
	Adjustment	<input type="text" value="\$9,000"/>	
		<input type="text" value="\$1,000"/>	
Violation Events			
	Number of Violation Events	<input type="text" value="1"/>	Number of violation days
		<input type="text" value="195"/>	
<i>mark only one with an x</i>	daily	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	Violation Base Penalty
	annual	<input type="text"/>	<input type="text" value="\$1,000"/>
	single event	<input checked="" type="text"/>	
	One single event is recommended.		
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	<input type="text" value="\$538"/>	Violation Final Penalty Total	<input type="text" value="\$1,598"/>
	This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$1,598"/>

Economic Benefit Worksheet

Respondent: Johnny Gore
Case ID No.: 34771
Reg. Ent. Reference No.: RN104806344
Media: Municipal Solid Waste
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				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)

	\$405	26-Mar-2007	30-Jun-2008	1.3	\$26	\$513	\$538
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

Estimated cost to dispose of approximately 15 cubic yards of waste (\$27 per cubic yard) and ensure that unauthorized burning does not occur at the site. Date Required is the investigation date and Final Date is the estimated date of compliance.

Approx. Cost of Compliance	\$405	TOTAL	\$538
----------------------------	-------	-------	-------

Screening Date 4-Oct-2007	Docket No. 2007-1601-MLM-E	PCW		
Respondent Johnny Gore		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 34771		<i>PCW Revision September 19, 2007</i>		
Reg. Ent. Reference No. RN104806344				
Media [Statute] Municipal Solid Waste				
Enf. Coordinator Dana Shuler				
Violation Number <input type="text" value="2"/>				
Rule Cite(s)	30 Tex. Admin. Code § 330.15(c)			
Violation Description	Failed to dispose of municipal solid waste at an authorized facility, as documented during an investigation conducted on March 23, 2007. Specifically, the Respondent disposed of slightly under 10,000 cubic yards of municipal solid waste including construction debris, metal, vegetative debris, vehicle parts, and other wastes at the site.			
	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 checked="" type="text" value="x"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<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 has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as result of this violation.			
	Adjustment	<input type="text" value="\$7,500"/>		
		<input type="text" value="\$2,500"/>		
Violation Events				
	Number of Violation Events	<input type="text" value="3"/>	<input type="text" value="195"/>	Number of violation days
<i>mark only one with an x</i>		daily	<input type="text"/>	
		monthly	<input type="text"/>	
		quarterly	<input checked="" type="text" value="x"/>	Violation Base Penalty
		semiannual	<input type="text"/>	<input type="text" value="\$7,500"/>
		annual	<input type="text"/>	
		single event	<input type="text"/>	
	Three quarterly events are recommended from the March 23, 2007 investigation date to the October 4, 2007 screening date.			
Economic Benefit (EB) for this violation			Statutory Limit Test	
	Estimated EB Amount	<input type="text" value="\$19,455"/>	Violation Final Penalty Total	<input type="text" value="\$11,982"/>
	This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$11,982"/>

Economic Benefit Worksheet

Respondent Johnny Gore
Case ID No. 34771
Reg. Ent. Reference No. RN104806344
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
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	\$270,000	23-Mar-2007	30-Aug-2008	1.4	\$19,455	n/a	\$19,455
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of approximately 10,000 cubic yards of municipal solid waste (\$27 per cubic yard). Date Required is the investigation date and Final Date is the expected 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

\$270,000

TOTAL

\$19,455

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF
AN ENFORCEMENT ACTION
AGAINST
JOHNNY GORE;
RN104806344

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2007-1601-MLM-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Johnny Gore ("Mr. Gore").

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

FINDINGS OF FACT

1. Mr. Gore owns and operates an unauthorized disposal site with burn areas at 9678 Wingfield Drive in Lumberton, Hardin County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12) and involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection conducted on March 23, 2007, a TCEQ Beaumont Regional Office investigator documented that Mr. Gore violated the following requirements:
 - a. Failed to comply with the prohibition on outdoor burning. Specifically, approximately 15 cubic yards of burned shingles, metal, construction debris, plastic, vegetative debris, and other wastes were observed at the Site.
 - b. Failed to dispose of municipal solid waste at an authorized facility. Specifically, Mr. Gore disposed of approximately 10,000 cubic yards of municipal solid waste including construction debris, metal, vegetative debris, vehicle parts, and other wastes at the Site.

4. Mr. Gore received notice of the violations on or about September 12, 2007.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Johnny Gore" (the "EDPRP") in the TCEQ Chief Clerk's office on March 10, 2008.
6. By letter dated March 10, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Gore with notice of the EDPRP. According to the return receipt "green card", Mr. Gore received notice of the EDPRP on March 12, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Gore received notice of the EDPRP, provided by the Executive Director. Mr. Gore failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Gore is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE chs. 361 and 382 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Gore failed to comply with the prohibition on outdoor burning, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 3.b., Mr. Gore failed to dispose of municipal solid waste at an authorized facility, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Gore with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, Mr. Gore has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Gore and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Gore for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of thirteen thousand five hundred eighty dollars (\$13,580.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Gore is assessed an administrative penalty in the amount of thirteen thousand five hundred eighty dollars (\$13,580.00) for violations of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and rules of the TCEQ. The payment of this administrative penalty and Mr. Gore's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Johnny Gore; Docket No. 2007-1601-MLM-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. Mr. Gore shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Gore shall cease accepting and/or disposing of any additional waste and all unauthorized burning at the Site;

- b. Within 120 days after the effective date of this Order, Mr. Gore shall ensure that all unauthorized waste, including burned material, at the Site is removed and properly disposed of at an authorized facility; and
- c. Within 135 days after the effective date of this Order, Mr. Gore shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provisions Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that 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
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Gore. Mr. Gore is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.

5. If Mr. Gore fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Gore's failure to comply is not a violation of this Order. Mr. Gore shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Gore shall notify the Executive Director within seven days after Mr. Gore 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 Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Gore shall be made in writing to the Executive Director. Extensions are not effective until Mr. Gore receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Gore if the Executive Director determines that Mr. Gore has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Johnny Gore
Docket No. 2007-1601-MLM-E
Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF ALFRED OLOKO

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, Mary Hammer filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Johnny Gore” (the “EDPRP”) with the Office of the Chief Clerk on March 10, 2008.

Mary Hammer sent the EDPRP to Mr. Gore at his last known address on March 10, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. Gore received notice of the EDPRP on March 12, 2008, as evidenced by the signature on the card.

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

Alfred Oloko

Alfred Oloko
Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 25th day of September, A.D., 2008.

Dawn E Beam

Notary Signature

Notary Stamp

