

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0859-MLM-E TCEQ ID: RN105171078 CASE NO.: 33620
RESPONDENT NAME: TOMMY RUTLEDGE

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 checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" 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

SITE WHERE VIOLATION(S) OCCURRED: 3951 Highway 164 East, Groesbeck, Limestone County

TYPE OF OPERATION: Storage facility

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired October 12, 2009. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney:** Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
- TCEQ Enforcement Coordinator:** Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492
- TCEQ Regional Contact:** Mr. Frank Burleson, Waco Regional Office, MC R-9, (254) 761-3001
- Respondent:** Mr. Tommy Rutledge, P.O. Box 1005, Groesbeck, Texas 76642
- Respondent's Attorney:** Mr. Andy McSwain, Fulbright Winniford, P.C., PO Box 445, Waco, TX 76703

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 23, 2007</p> <p>Date of NOE Relating to this Case: April 9, 2007</p> <p>Background Facts: The EDRP was filed against the Respondent and B & M Unclaimed Freight, Inc. (B & M) on August 29, 2007. Each Respondent filed an answer and the case was referred to SOAH. The preliminary hearing was waived and the parties engaged in discovery. The Respondent agreed to settle and the ALJ granted a Motion to Sever at the evidentiary hearing. The Respondent signed the Agreed Order on July 27, 2009.</p> <p>The evidentiary hearing regarding B & M proceeded and a Proposal for Decision was issued on August 26, 2009. The ALJ recommended that B & M also be assessed an administrative penalty of \$12,500 and perform the same corrective actions as contained in this order.</p> <p>Current Compliance Status: Currently not in compliance.</p> <p>MLM:</p> <ol style="list-style-type: none"> Failed to prevent and immediately abate and contain a spill or discharge of municipal solid waste into or adjacent to any water in the state [30 TEX. ADMIN. CODE § 327.5(a) and TEX. WATER CODE § 26.121(a)(1)]. Failed to comply with the prohibition on outdoor burning [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to dispose of municipal solid waste at an authorized facility [30 TEX. ADMIN. CODE § 330.15(c)]. 	<p>Total Assessed: \$12,500</p> <p>Total Deferred: \$8,900</p> <p><input type="checkbox"/> Expedited Order <input checked="" type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$100/\$3,500</p> <p>The Respondent paid \$100 of the undeferred administrative penalty. The remaining amount of \$3,500 shall be payable in 35 monthly payments of \$100 each.</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"> Immediately: <ol style="list-style-type: none"> Cease all unauthorized burning and cease accepting any additional waste at the Site; and Cease discharging any additional waste into or adjacent to any water in the state and implement procedures to prevent and abate any future spills or discharges of municipal solid waste into or adjacent to any water in the state. Within 60 days, collect representative soil or other appropriate media samples to evaluate the impact of the release and prepare an environmental site assessment to determine whether the release is subject to the Texas Risk Reduction Program ("TRRP") rules. The environmental site assessment shall be conducted in accordance with TCEQ guidance document "Determining Which Releases are Subject to TRRP" revised October 21, 2003. The environmental site assessment shall be submitted to the TCEQ for review and approval. If the release is subject to TRRP, Respondent shall comply with all applicable requirements of the Texas Risk Reduction Program which may include: plans, reports, notices, financial assurance, and Institutional Controls and respond completely and adequately, as determined by the TCEQ, to all letter requests for information within 30 days after the date of such letters, or by any other deadline specified in writing. Within 250 days, remove all municipal solid waste and unlabeled waste from the Site and dispose of it at an authorized facility. Within 275 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

TCEQ

DATES	Assigned	16-Apr-2007	Screening	21-May-2007	EPA Due	
	PCW	29-May-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Tommy Rutledge
Reg. Ent. Ref. No.	RN105171078
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33620	No. of Violations	3
Docket No.	2007-0859-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Colin Barth
Multi-Media	Water Quality and Air Quality	EC's Team	EnforcementTeam 7
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$12,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: The respondent has no record of any previous NOV's or Orders at this site in the past five years.

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

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

	0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$3,227	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$76,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$12,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$12,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$12,500
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral for non-expedited cases.

PAYABLE PENALTY	\$12,500
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Screening Date 21-May-2007

Docket No. 2007-0859-MLM-E

PCW

Respondent Tommy Rutledge

Policy Revision 2 (September 2002)

Case ID No. 33620

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN105171078

Media [Statute] Municipal Solid Waste

Enf. Coordinator Colin Barth

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The respondent has no record of any previous NOVs or Orders at this site in the past five years.

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

Screening Date 21-May-2007	Docket No. 2007-0859-MLM-E	PCW		
Respondent Tommy Rutledge	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 33620	<i>PCW Revision May 25, 2007</i>			
Reg. Ent. Reference No. RN105171078				
Media [Statute] Municipal Solid Waste				
Enf. Coordinator Colin Barth				
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 327.5(a) and Texas Water Code § 26.121(a)(1)			
Violation Description	Failed to prevent and immediately abate and contain a spill or discharge of municipal solid waste into or adjacent to any waters in the state, as documented during an investigation conducted on March 23, 2007. Specifically, municipal solid waste and barrels of unlabeled waste were observed discharging on to the ground and into a creek. Also, an oily sheen was observed on the pond located at the site.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	x	<input type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	25%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	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 a result of this violation.			
Adjustment		\$7,500		
		\$2,500		
Violation Events				
Number of Violation Events		2	Number of violation days	
		60		
<i>mark only one with an x</i>	daily	<input type="checkbox"/>	Violation Base Penalty	
	monthly	x		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
single event	<input type="checkbox"/>	\$5,000		
Two monthly events are recommended from the investigation date of March 23, 2007 to the screening date of May 22, 2007.				
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		\$361	Violation Final Penalty Total	
			\$5,000	
This violation Final Assessed Penalty (adjusted for limits)			\$5,000	

Economic Benefit Worksheet

Respondent: Tommy Rutledge
Case ID No.: 33620
Reg. Ent. Reference No.: RN105171078
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	\$5,000	23-Mar-2007	27-Jan-2008	0.8	\$212	n/a	\$212
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$3,500	23-Mar-2007	27-Jan-2008	0.8	\$149	n/a	\$149

Notes for DELAYED costs
 Estimated cost to ensure no municipal solid waste discharges into or adjacent to waters in the state and to immediately abate and contain discharges that do occur. Also included is the estimated cost to clean up areas contaminated from the discharge of municipal solid waste. The 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	\$8,500	TOTAL	\$361
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Screening Date 21-May-2007

Docket No. 2007-0859-MLM-E

PCW

Respondent Tommy Rutledge

Policy Revision 2 (September 2002)

Case ID No. 33620

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN105171078

Media [Statute] Municipal Solid Waste

Enf. Coordinator Colin Barth

Violation Number 2

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, it was noted that approximately 3.5 acres of abandoned and unlabeled drums, trash material, vehicles, tires, metal, and other municipal solid waste had been burned at the site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 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 a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 1 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$2,500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$106

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent: Tommy Rutledge
Case ID No.: 33620
Reg. Ent. Reference No.: RN105171078
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

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)	\$2,500	23-Mar-2007	27-Jan-2008	0.8	\$106	n/a	\$106

Notes for DELAYED costs

Estimated cost to ensure no fires take place at the site from the investigation date to 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

\$2,500

TOTAL

\$106

Screening Date 21-May-2007	Docket No. 2007-0859-MLM-E	PCW
Respondent Tommy Rutledge		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 33620		<small>PCW Revision May 25, 2007</small>
Reg. Ent. Reference No. RN105171078		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Colin Barth		
Violation Number <input type="text" value="3"/>		
Rule Cite(s)	<input type="text" value="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, at the time of the investigation a mixture of approximately 5,000 cubic yards of municipal solid waste and unlabeled waste had been disposed of 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"/>	Percent <input type="text" value="25%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

>> 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 Number of violation days

<small>mark only one with an x</small>	daily	<input type="text"/>
	monthly	<input checked="" type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$2,760"/>	Violation Final Penalty Total <input type="text" value="\$5,000"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$5,000"/>	

Economic Benefit Worksheet

Respondent Tommy Rutledge

Case ID No. 33620

Reg. Ent. Reference No. RN105171078

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
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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	\$65,000	23-Mar-2007	27-Jan-2008	0.8	\$2,760	n/a	\$2,760
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and properly dispose of approximately 5,000 cubic yards of municipal solid waste and unknwn waste from the investigation date to 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

\$65,000

TOTAL

\$2,760

Compliance History

Customer/Respondent/Owner-Operator: CN603156787 RUTLEDGE, TOMMY Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105171078 3951 HWY 164 EAST Classification: AVERAGE BY Site Rating: 3.01
ID Number(s): DEFAULT
Location: 3951 HWY 164 EAST, GROESBECK, TX, 76642 Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: May 21, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: May 21, 2002 to May 21, 2007
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Colin Barth Phone: 512 239 0086

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.
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 04/10/2007 (555102)
 - 2 04/27/2007 (542254)
 - 3 04/27/2007 (556110)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TOMMY RUTLEDGE,
RN105171078

§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0859-MLM-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 Tommy Rutledge ("Mr. Rutledge") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE chs. 361 and 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Rutledge, represented by Andy McSwain of the law firm of Fulbright Winniford, appear before the Commission and together stipulate that:

1. Mr. Rutledge owns and operates a storage facility at 3951 Highway 164 East, Groesbeck, Limestone County, Texas (the "Site").
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 chs. 361 and 382, TEX. WATER CODE ch. 26, and TCEQ rules.
3. The Commission and Mr. Rutledge agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Rutledge is subject to the Commission's jurisdiction.
4. Mr. Rutledge received notice of the violations alleged in Section II ("Allegations") on or about April 14, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Rutledge 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 dollars (\$12,500.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Mr. Rutledge and determined that Mr. Rutledge is unable to pay part of the administrative penalty. Therefore, eight thousand nine hundred dollars (\$8,900.00) of the penalty is deferred contingent upon Mr. Rutledge'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 Mr. Rutledge fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. Rutledge to pay all or part of the deferred penalty.

Mr. Rutledge paid one hundred dollars (\$100.00) of the undeferred administrative penalty. The remaining amount of three thousand five hundred dollars (\$3,500.00) shall be payable in thirty-five monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Rutledge fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the acceleration of any remaining balance constitutes the failure by Mr. Rutledge to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of any deferred penalty amount.

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. Rutledge agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that there are two respondents, Mr. Rutledge and B & M Unclaimed Freight, Inc., ("B & M") named in TCEQ Docket No. 2007-0859-MLM-E. This Agreed Order does not relieve B & M of any administrative penalty that it may be ordered to pay. Further, this Agreed Order does not relieve B & M of any corrective action it may be ordered to perform.
10. 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. Rutledge has not complied with one or more of the terms or conditions in this Agreed Order.

11. 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.
12. 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

1. During an investigation conducted on March 23, 2007, a TCEQ Waco Regional Office investigator documented that Mr. Rutledge violated:
 - a. 30 TEX. ADMIN. CODE § 327.5(a) and TEX. WATER CODE § 26.121(a)(1) by failing to prevent and immediately abate and contain a spill or discharge of municipal solid waste into or adjacent to any water in the state. Specifically, municipal solid waste and barrels of unlabeled waste were observed discharging on to the ground and into a creek. Also, an oily sheen was observed on the pond located on the Site.
 - b. 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to comply with the prohibition on outdoor burning. Specifically, it was noted that approximately 3.5 acres of abandoned and unlabeled drums, trash material, vehicles, tires, metal, and other municipal solid waste had been burned at the Site.
 - c. 30 TEX. ADMIN. CODE § 330.15(c) by failing to dispose of municipal solid waste at an authorized facility. Specifically, at the time of the investigation approximately 5,000 cubic yards of waste had been disposed of at the Site.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Rutledge pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Rutledge'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: Tommy Rutledge, Docket No. 2007-0859-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

Mr. Rutledge's payment of this administrative penalty and Mr. Rutledge's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations against Mr. Rutledge in Section II. Additionally, Mr. Rutledge's payment of an administrative penalty and Mr. Rutledge's compliance with the terms and conditions set forth in this Agreed Order do not resolve the enforcement action or allegations against B & M and do not absolve B & M of any liability which may result therefrom. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations against either party/respondent which are not raised or resolved here.

2. Mr. Rutledge shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Mr. Rutledge shall:
 - i. Cease all unauthorized burning and accepting any additional waste at the Site, in accordance with 30 TEX. ADMIN. CODE §§ 111.201 and 330.15(c).
 - ii. Cease discharging any additional waste into or adjacent to any water in the state, in accordance with TEX. WATER CODE § 26.121(a)(1) and implement procedures to prevent and abate any future spills or discharges of municipal solid waste into or adjacent to any water in the state, in accordance with 30 TEX. ADMIN. CODE § 327.5(a).

- b. Within 60 days after the effective date of this Agreed Order Mr. Rutledge shall:

Collect representative soil or other appropriate media samples to evaluate the impact of the release and prepare an environmental site assessment to determine whether the release is subject to the Texas Risk Reduction Program ("TRRP") rules in 30 TEX. ADMIN. CODE ch. 350. The environmental site assessment shall be conducted in accordance with TCEQ guidance document "Determining Which Releases are Subject to TRRP" revised October 21, 2003. The environmental site

assessment, including remediation plans or justification for no further action, as applicable, shall be submitted for review and approval to:

Environmental Cleanup Section
Remediation Division, MC 137 or 221
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. If the release is subject to TRRP, Mr. Rutledge shall comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 and 350.96; financial assurance (30 TEX. ADMIN. CODE § 350.33(l)); and Institutional Controls under Subchapter F and respond completely and adequately, as determined by the TCEQ, to all letter requests for information within 30 days after the date of such letters, or by any other deadline specified in writing;
- d. Within 250 days after the effective date of this Agreed Order, Mr. Rutledge shall remove all municipal solid waste and unlabeled waste from the Site and dispose of it at an authorized facility, in accordance with 30 TEX. ADMIN. CODE § 330.15(c) and TEX. HEALTH & SAFETY CODE § 382.085(b); and
- e. Within 275 days after the effective date of this Agreed Order, Mr. Rutledge shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.d. 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.”

Mr. Rutledge shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.d. to:

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

and

Frank Burlison, Waste and Water Sections Manager
Texas Commission on Environmental Quality
Waco Regional Office
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

and

Gary Goldman, Air Section Manager
Texas Commission on Environmental Quality
Waco Regional Office
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Rutledge. Mr. Rutledge is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If Mr. Rutledge 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, Mr. Rutledge's failure to comply is not a violation of this Agreed Order. Mr. Rutledge shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Rutledge shall notify the Executive Director within seven days after Mr. Rutledge becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Rutledge shall be made in writing to the Executive Director. Extensions are not effective until Mr. Rutledge receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Rutledge in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Agreed Order to Mr. Rutledge, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Rutledge, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Tommy Rutledge
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Burgess Perdue

For the Executive Director

9/16/09
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 Mr. Rutledge's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Rutledge;
- 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 Mr. Rutledge;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Rutledge; and
- TCEQ seeking other relief as authorized by law.

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

Tommy Rutledge
Signature

July 27, 2009
Date

Tommy Rutledge
Name (Printed or typed)
Authorized representative of
Tommy Rutledge

owner
Title