

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-0016-MSW-E TCEQ ID: RN104795349 CASE NO.: 36962
RESPONDENT NAME: TRANSCONTINENTAL REALTY INVESTORS, INC.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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 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

SITE WHERE VIOLATION(S) OCCURRED: 9011 LBJ Freeway in Farmers Branch, Dallas County

TYPE OF OPERATION: Commercial and residential development site that includes a closed pre-subtitle D municipal solid waste ("MSW") landfill

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: One complaint was received alleging that there was a large pile of MSW that had been dug up at the closed Manhattan landfill. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter. The complainant has not expressed a desire to protest this enforcement action or speak at agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired October 5, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Mr. John Shelton, Waste Enforcement Section, MC 128, (512) 239-2563
TCEQ Regional Contact: Mr. Sam Barrett, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5903
Respondent: Mr. R.L. Lemke, Development Manager, Transcontinental Realty Investors, Inc., 1800 Valley View Lane, Suite 300, Dallas, Texas 75234
Respondent's Attorney: Not represented by counsel on this enforcement matter.

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: July 10, 2008</p> <p>Date of Investigation Relating to this Case: August 6, 2008</p> <p>Date of NOE Relating to this Case: November 12, 2008</p> <p>Background Facts: Settlement was achieved and the agreed order was signed on July 30, 2009.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>MSW:</p> <ol style="list-style-type: none"> Failed to obtain prior authorization of the Executive Director before interrupting, disturbing, or altering the final cover of a closed landfill [30 TEX. ADMIN. CODE § 330.954(e)(1)]. Failed to properly backfill the excavated areas at the Site [30 TEX. ADMIN. CODE § 330.955(g)]. Failed to ensure that the excavated MSW was removed to an authorized facility [30 TEX. ADMIN. CODE § 330.955(c)]. Failed to prevent the unauthorized disposal of MSW [30 TEX. ADMIN. CODE § 330.15(c)]. 	<p>Total Assessed: \$ 35,700</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$5,700/\$30,000</p> <p>The Respondent paid \$5,700 of the administrative penalty. The remaining amount of \$30,000 shall be payable in 12 monthly payments of \$2,500 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>Findings Order Justification: Environmental receptors have been exposed to pollutants which exceed levels that are protective.</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 interrupting, disturbing, or altering the final cover at the Site until proper authorization has been obtained from the Commission; and Cease accepting and disposing any additional waste at the Site. Within 30 days: <ol style="list-style-type: none"> Remove all excavated MSW and construction waste piles and dispose of the wastes at an authorized facility; and Properly backfill the excavated area of the closed landfill. Within 45 days, submit written certification demonstrating compliance.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	24-Nov-2008			
	PCW	27-Jan-2009	Screening	23-Dec-2008	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Transcontinental Realty Investors, Inc.		
Reg. Ent. Ref. No.	RN104795349		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36962	No. of Violations	4
Docket No.	2009-0016-MSW-E	Order Type	Findings
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	John Shelton
		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	\$34,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$1,700
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Notes	The Respondent received one NOV with same or similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$11,819	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$202,625	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$35,700
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$35,700
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$35,700
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DEFERRAL	0.0%	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 is recommended for Findings Orders.
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PAYABLE PENALTY	\$35,700
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Screening Date 23-Dec-2008

Docket No. 2009-0016-MSW-E

PCW

Respondent Transcontinental Realty Investors, Inc.

Policy Revision 2 (September 2002)

Case ID No. 36962

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104795349

Media [Statute] Municipal Solid Waste

Enf. Coordinator John Shelton

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 23-Dec-2008		Docket No. 2009-0016-MSW-E		PCW
Respondent Transcontinental Realty Investors, Inc.		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 36962		<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No. RN104795349				
Media [Statute] Municipal Solid Waste				
Enf. Coordinator John Shelton				
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 330.954(e)(1)			
Violation Description	Failed to obtain prior authorization before interrupting, disturbing, or altering the final cover of a closed municipal solid waste ("MSW") landfill, as documented during an investigation conducted on August 6, 2008. Specifically, the final cover of the closed landfill was disturbed and MSW was excavated from the landfill without prior authorization.			
Base Penalty				\$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 type="text"/>	Percent <input type="text" value="0%"/>
>> Programmatic Matrix				
Falsification				
Major Moderate Minor				
<input type="text"/> <input checked="" type="text" value="x"/> <input type="text"/> <input type="text"/>				
Percent <input type="text" value="10%"/>				
Matrix Notes	100% of the rule requirement was not met.			
Adjustment				\$9,000
				\$1,000
Violation Events				
Number of Violation Events		<input type="text" value="5"/>	Number of violation days	
		<input type="text" value="140"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>		
	weekly	<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				\$5,000
Five monthly events are recommended from the August 6, 2008 investigation date to the December 23, 2008 screening date.				
Good Faith Efforts to Comply				
		0.0%	Reduction	
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>			
Ordinary	<input type="text"/>			
N/A	<input checked="" type="text" value="x"/>	(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal				\$5,000
Economic Benefit (EB) for this violation				
Statutory Limit Test				
Estimated EB Amount		<input type="text" value="\$291"/>	Violation Final Penalty Total	
			<input type="text" value="\$5,250"/>	
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$5,250"/>

Economic Benefit Worksheet

Respondent: Transcontinental Realty Investors, Inc.

Case ID No.: 36962

Reg. Ent. Reference No.: RN104795349

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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$5,000	6-Aug-2008	5-Oct-2009	1.16	\$291	n/a	\$291
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit an administratively complete application for disturbing the final cover of a closed MSW landfill. 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$291

Screening Date 23-Dec-2008	Docket No. 2009-0016-MSW-E	PCW		
Respondent Transcontinental Realty Investors, Inc.	<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 36962	<small>PCW Revision October 30, 2008</small>			
Reg. Ent. Reference No. RN104795349				
Media [Statute] Municipal Solid Waste				
Enf. Coordinator John Shelton				
Violation Number <input type="text" value="2"/>				
Rule Cite(s)	30 Tex. Admin. Code § 330.955(g)			
Violation Description	Failed to backfill and compact the excavated area to levels that exceed the existing grade and to provide positive drainage, as documented during an investigation conducted on August 6, 2008. Specifically, the Respondent did not backfill the excavated area.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
Potential		x		
		Percent	10%	
>> Programmatic Matrix				
			Falsification	
			Major	
			Moderate	
			Minor	
		Percent	0%	
Matrix Notes	Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.			
Adjustment		\$9,000		
		\$1,000		
Violation Events				
Number of Violation Events		2	Number of violation days	
		140		
<small>mark only one with an x</small>	daily		Violation Base Penalty	
	weekly			
	monthly			
	quarterly	x		
	semiannual			
	annual			
	single event			
Two quarterly events are recommended from the August 6, 2008 investigation date to the December 23, 2008 screening date.			\$2,000	
Good Faith Efforts to Comply		0.0% Reduction	\$0	
		<small>Before NOV NOV to EDPRP/Settlement Offer</small>		
Extraordinary				
Ordinary				
N/A	x	<small>(mark with x)</small>		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal		\$2,000		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		\$1,747	Violation Final Penalty Total	
			\$2,100	
		This violation Final Assessed Penalty (adjusted for limits)		
		\$2,100		

Economic Benefit Worksheet

Respondent Transcontinental Realty Investors, Inc.
Case ID No. 36962
Reg. Ent. Reference No. RN104795349
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Samplings				0.00	\$0	n/a	\$0
Remediation/Disposal	\$30,000	6-Aug-2008	5-Oct-2009	1.16	\$1,747	n/a	\$1,747
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly backfill the excavated area. 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Samplings				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$30,000

TOTAL

\$1,747

Screening Date 23-Dec-2008	Docket No. 2009-0016-MSW-E	PCW		
Respondent Transcontinental Realty Investors, Inc.	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36962	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN104795349				
Media [Statute] Municipal Solid Waste				
Enf. Coordinator John Shelton				
Violation Number <input type="text" value="3"/>				
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code §330.955(c)"/>			
Violation Description	<input type="text" value="Failed to ensure that the excavated MSW was removed to an authorized facility, as documented during an investigation conducted on August 6, 2008. Specifically, approximately 20,000 cubic yards of MSW was excavated from the closed landfill and was not removed to an authorized facility."/>			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="50%"/>	
>> 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	<input type="text" value="Human health or the environment has been exposed to significant amounts of pollutants that exceed levels protective of human health as a result of the violation."/>			
		Adjustment	<input type="text" value="\$5,000"/>	
			<input type="text" value="\$5,000"/>	
Violation Events				
Number of Violation Events		<input type="text" value="5"/>	Number of violation days	
		<input type="text" value="140"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty	
	weekly	<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"/>		
		<input type="text" value="\$25,000"/>		
<input type="text" value="Five monthly events are recommended from the August 6, 2008 investigation date to the December 23, 2008 screening date."/>				
Good Faith Efforts to Comply				
		0.0% Reduction	<input type="text" value="\$0"/>	
		<small>Before NOV NOV to EDRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	<input checked="" type="text" value="x"/>	<small>(mark with x)</small>		
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
		Violation Subtotal	<input type="text" value="\$25,000"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	<input type="text" value="\$9,687"/>	Violation Final Penalty Total	<input type="text" value="\$26,250"/>	
		This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$26,250"/>	

Economic Benefit Worksheet

Respondent: Transcontinental Realty Investors, Inc.
Case ID No. 36962
Reg. Ent. Reference No. RN104795349
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
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$166,000	6-Aug-2008	6-Oct-2009	1.17	\$9,687	n/a	\$9,687
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of approximately 20,000 cubic yards of waste at an authorized landfill. 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$166,000

TOTAL:

\$9,687

Screening Date 23-Dec-2008		Docket No. 2009-0016-MSW-E		PCW	
Respondent Transcontinental Realty Investors, Inc.		<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36962		<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN104795349					
Media [Statute] Municipal Solid Waste					
Enf. Coordinator John Shelton					
Violation Number		<input type="text" value="4"/>			
Rule Cite(s)		<input type="text" value="30 Tex. Admin. Code §330.15(c)"/>			
Violation Description		<input type="text" value="Failed to prevent the unauthorized disposal of MSW, as documented during an investigation conducted on August 6, 2008. Specifically, the Respondent failed to prevent unauthorized disposal of approximately 150 cubic yards of additional construction waste in various piles around 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 type="text"/>	<input checked="" type="checkbox"/>	
	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		<input type="text" value="Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation."/>			
Adjustment				<input type="text" value="\$9,000"/>	
				<input type="text" value="\$1,000"/>	
Violation Events					
Number of Violation Events		<input type="text" value="2"/>	Number of violation days <input type="text" value="140"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>			
	weekly	<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="\$2,000"/>	
<input type="text" value="Two quarterly events are recommended from the August 6, 2008 investigation date to the December 23, 2008 screening date."/>					
Good Faith Efforts to Comply		0.0% Reduction		<input type="text" value="\$0"/>	
		<small>Before NOV</small>	<small>NOV to EDRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>		
N/A	<input checked="" type="checkbox"/>	<small>(mark with x)</small>			
Notes		<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
Violation Subtotal				<input type="text" value="\$2,000"/>	
Economic Benefit (EB) for this violation					
Estimated EB Amount		<input type="text" value="\$95"/>		Violation Final Penalty Total <input type="text" value="\$2,100"/>	
Statutory Limit Test				<input type="text" value="\$2,100"/>	
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$2,100"/>	

Economic Benefit Worksheet

Respondent Transcontinental Realty Investors, Inc.
Case ID No. 36962
Reg. Ent. Reference No. RN104795349
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	Overtime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$1,625	6-Aug-2008	5-Oct-2009	1.16	\$95	n/a	\$95
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of approximately 150 cubic yards of waste at an authorized landfill. 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,625

TOTAL

\$95

Compliance History Report

Customer/Respondent/Owner-Operator: CN601124613 Transcontinental Realty Investors, Inc. Classification: AVERAGE Rating: 4.00

Regulated Entity: RN104795349 MANHATTAN SITE CLOSED LANDFILL Classification: AVERAGE Site Rating: 5.00

ID Number(s):

Location: 9011 LBJ FRWY, FARMERS BRANCH, TX, 75234

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: December 19, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 19, 2003 to December 19, 2008

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

Name: John Shelton Phone: (512) 239-2563

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? Yes
3. If Yes, who is the current owner?
Transcontinental Realty Investors, Inc.
4. If Yes, who was/were the prior owner(s)?
PRIME INCOME ASSET MANAGEMENT
5. When did the change(s) in ownership occur?
01/24/2006
6. Rating Date: 9/1/2008 Repeat Violator: NO

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 02/03/2006 (438690)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 02/06/2006 (438690)
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 330, SubChapter T 330.954(e)(1)
30 TAC Chapter 330, SubChapter T 330.955(a)
Description: Facility failed to obtained prior written approval before interrupting, disturbing, or altering the final cover of a Closed Municipal Solid Waste Land Fill.

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter T 330.955(c)

Description: Failure to properly dispose municipal solid waste removed from a closed landfill at a permitted municipal solid waste disposal facility.

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
TRANSCONTINENTAL REALTY
INVESTORS, INC.
RN104795349

§
§
§
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§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0016-MSW-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Transcontinental Realty Investors, Inc. ("Transcontinental") 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 Transcontinental presented this agreement to the Commission.

Transcontinental understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Transcontinental agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Transcontinental.

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

I. FINDINGS OF FACT

1. Transcontinental owns and operates a commercial and residential development site that includes a closed pre-subtitle D municipal solid waste ("MSW") landfill at 9011 LBJ Freeway in Farmers Branch, Dallas County, Texas (the "Site").
2. The Site involves or involved the management of MSW as defined in TEX. HEALTH & SAFETY CODE ch. 361.

3. During an investigation conducted on August 6, 2008, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Transcontinental:
 - a. Failed to obtain authorization from the Executive Director prior to interrupting, disturbing, or altering the disturbance of the final cover of the closed landfill at the Site. Specifically, the final cover of the closed landfill was disturbed and MSW was excavated from the landfill without prior authorization from the Executive Director;
 - b. Failed to properly backfill and compact the excavated area at the Site to levels exceeding the existing grade to provide positive drainage;
 - c. Failed to ensure that the excavated MSW at the Site was removed to an authorized facility. Specifically, approximately 20,000 cubic yards of MSW excavated from the Site was not removed to an authorized facility;
 - d. Failed to prevent the unauthorized disposal of MSW. Specifically, approximately 150 cubic yards of additional construction waste was disposed in various piles around the Site.
4. Transcontinental received notice of the violations on or about November 17, 2008.

II. CONCLUSIONS OF LAW

1. Transcontinental is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3.a., Transcontinental failed to obtain prior authorization of the Executive Director before interrupting, disturbing, or altering the final cover of a closed landfill, in violation of 30 TEX. ADMIN. CODE § 330.954(e)(1).
3. As evidenced by Findings of Fact No. 3.b., Transcontinental failed to properly backfill the excavated areas at the Site, in violation of 30 TEX. ADMIN. CODE § 330.955(g).
4. As evidenced by Findings of Fact No. 3.c., Transcontinental failed to ensure that the excavated MSW was removed to an authorized facility, in violation of 30 TEX. ADMIN. CODE § 330.955(c).
5. As evidenced by Findings of Fact No. 3.d., Transcontinental failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c).

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Transcontinental 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 thirty-five thousand seven hundred dollars (\$35,700.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Transcontinental has paid five thousand seven hundred dollars (\$5,700.00) of the administrative penalty. The remaining amount of thirty thousand dollars (\$30,000.00) of the administrative penalty shall be payable in twelve monthly payments of two thousand five hundred dollars (\$2,500.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be remitted not later than 30 days following the due date of the previous payment. If Transcontinental fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, 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 failure of Transcontinental to meet the payment schedule of this Agreed Order constitutes the failure by Transcontinental to timely and satisfactorily comply with all of the terms of this Agreed Order.

III. ORDERING PROVISIONS

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

1. Transcontinental is assessed an administrative penalty in the amount of thirty-five thousand seven hundred dollars (\$35,700.00) as set forth in Section II, Paragraph 7 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Transcontinental's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Transcontinental Realty Investors, Inc., Docket No. 2009-0016-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. Transcontinental shall undertake the following technical requirements:
- a. Immediately upon the effective date of this Agreed Order,
 - i. Cease interrupting, disturbing, or altering the final cover at the Site until proper authorization has been obtained from the Commission; and
 - ii. Cease accepting and disposing any additional waste at the Site.
 - b. Within 30 days after the effective date of this Agreed Order,
 - i. Remove all excavated MSW and construction waste piles and dispose of the wastes at an authorized facility; and
 - ii. Properly backfill the excavated area of the closed landfill in accordance with 30 TEX. ADMIN. CODE § 330.955(g).
 - c. Within 45 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. 2.a. through 2.b.ii.

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 fines 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:

Municipal Solid Waste Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

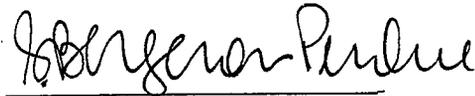
3. The provisions of this Agreed Order shall apply to and be binding upon Transcontinental. Transcontinental is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If Transcontinental fails to comply with 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, Transcontinental's failure to comply is not a violation of this Agreed Order. Transcontinental shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Transcontinental shall notify the Executive Director within seven days after Transcontinental 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 Transcontinental shall be made in writing to the Executive Director. Extensions are not effective until Transcontinental receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 Transcontinental if the Executive Director determines that Transcontinental has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.

8. This Agreed Order, issued by the Commission, shall not be admissible against Transcontinental 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.
9. 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 under this Agreed Order.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

9/2/2009

Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Transcontinental Realty Investors, Inc. I am authorized to agree to the attached Agreed Order on behalf of Transcontinental Realty Investors, Inc., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Transcontinental Realty Investors, Inc. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

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



Signature

July 30, 2009

Date

STEVEN A. SHELLEY

Name (Printed or typed)
Authorized Representative of
Transcontinental Realty Investors, Inc.

VICE PRESIDENT

Title