

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2008-1548-MLM-E **TCEQ ID:** RN105591150 **CASE NO.:** 36584
RESPONDENT NAME: City of Marshall

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 AND 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
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Marshall Fire Training Grounds, 2300 Five Notch Road, Marshall, Harrison County</p> <p>TYPE OF OPERATION: Unauthorized disposal site</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on July 21, 2008, alleging that the Respondent was burning and disposing municipal solid waste ("MSW") without authorization. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 11, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Keith Frank, Enforcement Division, Enforcement Team 7, MC 128; (512) 239-1203; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. William Power, Chairman of the Commission, City of Marshall, P.O. Box 468, Marshall, Texas 75670 Mr. Frank Johnson, City Manager, City of Marshall, P.O. Box 468, Marshall, Texas 75670 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: July 21, 2008</p> <p>Date of Investigation Relating to this Case: July 21, 2008</p> <p>Date of NOV/NOE Relating to this Case: August 28, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>AIR</p> <p>1) Failure to prohibit the burning of MSW for the purpose of disposal. Specifically, the Respondent allowed the unauthorized burning of tree debris [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>WATER/WASTE</p> <p>2) Failure to prohibit the disposal of MSW without specific authorization from the Commission and failure to prevent the discharge of road oil/tack oil into or adjacent to water in the state, specifically Parker Creek, segment 0505, in the Sabine River Basin [30 TEX. ADMIN. CODE § 330.15(a)(1) and TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$4,750</p> <p>Total Deferred: \$950 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$3,800</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input 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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has completed proper disposal of the MSW including the road oil/tack oil on August 22, 2008.</p>

Additional ID No(s): 0



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	2-Sep-2008	Screening	23-Sep-2008	EPA Due	
	PCW	27-Oct-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Marshall
Reg. Ent. Ref. No.	RN105591150
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36584	No. of Violations	2
Docket No.	2008-1548-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	Yes
Multi-Media	Air and Water quality	Enf. Coordinator	Michael Graham
		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	\$6,000
---	-------------------	---------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
---------------------------	------------------	--------------------------------	-----

Notes: No adjustment for compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
--------------------	----	------------------	-------------------	-----

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$1,250
--	-------------------	---------

Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts \$1,241
 Approx. Cost of Compliance \$7,276
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,750
-----------------------------	-----------------------	---------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$4,750

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,750
-----------------------------------	-------------------------------	---------

DEFERRAL	20.0% Reduction	Adjustment	-\$950
-----------------	-----------------	-------------------	--------

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$3,800
------------------------	---------

Screening Date 23-Sep-2008

Docket No. 2008-1548-MLM-E

PCW

Respondent City of Marshall

Policy Revision 2 (September 2002)

Case ID No. 36584

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105591150

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Graham

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

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

Adjustment Percentage (Subtotal 2) 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

No adjustment for compliance history.

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

Screening Date: 23-Sep-2008	Docket No.: 2008-1548-MLM-E	PCW		
Respondent: City of Marshall	<small>Policy Revision 2 (September 2002)</small>			
Case ID No.: 38584	<small>PCW Revision June 12, 2008</small>			
Reg. Ent. Reference No.: RN105591150				
Media [Statute]: Municipal Solid Waste				
Enf. Coordinator: Michael Graham				
Violation Number: <input type="text" value="1"/>				
Rule Cite(s):	<input type="text" value="30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)"/>			
Violation Description:	<input allowed="" burning="" debris."="" disposal.="" for="" msw")="" of="" purpose="" respondent="" specifically,="" the="" tree="" type="text" unauthorized="" value="Failed to prohibit the burning of municipal solid waste ("/>			
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 which do not exceed levels that are protective of human health or environmental receptors 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="1"/>	Number of violation days	
		<input type="text" value="1"/>		
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="checkbox"/>		
<input type="text" value="One single event is recommended."/>			<input type="text" value="\$1,000"/>	
Good Faith Efforts to Comply		<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>	
		<small>Before NOV NOV to EDPRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<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 good faith criteria for this violation."/>			
Violation Subtotal		<input type="text" value="\$1,000"/>		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	<input type="text" value="\$1,214"/>	Violation Final Penalty Total	<input type="text" value="\$1,000"/>	
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$1,000"/>		

Economic Benefit Worksheet

Respondent: City of Marshall
Case ID No.: 36584
Reg. Ent. Reference No.: RN105591150
Media: Municipal Solid Waste
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description: No commas or \$						

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$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]	\$1,214	21-Jul-2008	21-Jul-2008	0.00	\$0	\$1,214	\$1,214
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated costs to have properly disposed of MSW at an authorized facility. The date required and the final date is the date of the investigation.

Approx. Cost of Compliance

\$1,214

TOTAL

\$1,214

Screening Date 23-Sep-2008	Docket No. 2008-1548-MLM-E	PCW
Respondent City of Marshall	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 36584	<i>PCW Revision June 12, 2008</i>	
Reg. Ent. Reference No. RN105591150		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Michael Graham		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 330.15(a)(1) and Tex. Water Code § 26.121(a)"/>	
Violation Description	<input type="text" value="Failed to prohibit the disposal of MSW without specific authorization from the Commission and failed to prevent the discharge of road oil/tack oil into or adjacent to water in the state, specifically Parker Creek, segment 0505, in the Sabine River Basin."/>	
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"/>
Potential	<input type="text"/>	<input type="text"/>
Percent		<input type="text" value="25%"/>
>> Programmatic Matrix		
	Falsification	Major
	<input type="text"/>	<input type="text"/>
	Moderate	Minor
	<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 which do not exceed levels that are protective of human health or environmental receptors as a result of the violation."/>	
Adjustment		<input type="text" value="\$7,500"/>
		<input type="text" value="\$2,500"/>
Violation Events		
Number of Violation Events	<input type="text" value="2"/>	Number of violation days <input type="text" value="32"/>
<i>mark only one with an x</i>	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		<input type="text" value="\$5,000"/>
<input type="text" value="Two monthly events are recommended from the July 21, 2008 investigation date to the August 22, 2008 compliance date."/>		
Good Faith Efforts to Comply	<input type="text" value="26.0%"/> Reduction	<input type="text" value="\$1,250"/>
	Before NOV NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="text" value="x"/>	<input type="text"/>
N/A	<input type="text" value="(mark with x)"/>	
Notes	<input type="text" value="The Respondent has disposed of approximately 3,237 cubic yards of debris, as well as, completed remediation of the area in which road oil/tack oil was found on August 22, 2008."/>	
Violation Subtotal		<input type="text" value="\$3,750"/>
Economic Benefit (EB) for this violation		
Statutory Limit Test		
Estimated EB Amount	<input type="text" value="\$27"/>	Violation Final Penalty Total <input type="text" value="\$3,750"/>
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$3,750"/>

Economic Benefit Worksheet

Respondent: City of Marshall
Case ID No.: 36584
Reg. Ent. Reference No.: RN105591150
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/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$6,062	21-Jul-2008	22-Aug-2008	0.09	\$27	n/a	\$27
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Disposal costs were derived from Invoices provided by the Respondent. The date required is the date of the investigation and the final date is the 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

\$6,062

TOTAL

\$27

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600337612	City of Marshall	Classification: AVERAGE	Rating: 1.57
Regulated Entity:	RN105591150	CITY OF MARSHALL FIRE TRAINING GROUNDS	Classification: HIGH	Site Rating: 0.00
ID Number(s):	MUNICIPAL SOLID WASTE NON	ID NUMBER	F2025	
Location:	2300 FIVE NOTCH ROAD, MARSHALL, TX, 75674		Rating Date: 9/1/2008	Repeat Violator: NO
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	October 24, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 23, 2003 to September 23, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Michael Graham		Phone:	808-796-7635

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 08/29/2008 (700648)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF MARSHALL
RN105591150

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1548-MLM-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Marshall ("the City") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates an unauthorized disposal site at 2300 Five Notch Road in Marshall, Harrison County, Texas (the "Site").
2. The Site involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361 and has discharged municipal solid waste into or adjacent any water in the state under TEX. WATER CODE, ch. 26.
3. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
4. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
5. The City received notice of the violations alleged in Section II ("Allegations") on or about September 2, 2008.
6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

7. An administrative penalty in the amount of Four Thousand Seven Hundred Fifty Dollars (\$4,750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Three Thousand Eight Hundred Dollars (\$3,800) of the administrative penalty and Nine Hundred Fifty Dollars (\$950) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.
8. 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.
9. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
10. The Executive Director recognizes that the City has completed proper disposal of the municipal solid waste including the road oil/tack oil on August 22, 2008.
11. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
12. 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.
13. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the City is alleged to have:

1. Failed to prohibit the burning of municipal solid waste for the purpose of disposal. Specifically, the Respondent allowed the unauthorized burning of tree debris, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 21, 2008.
2. Failed to prohibit the disposal of municipal solid waste without specific authorization from the Commission and failed to prevent the discharge of road oil/tack oil into or adjacent to water in the state, specifically Parker Creek, segment 0505, in the Sabine River Basin, in violation of 30 TEX. ADMIN. CODE § 330.15(a)(1) and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on July 21, 2008.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 7 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Marshall, Docket No. 2008-1548-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. The provisions of this Agreed Order shall apply to and be binding upon the City. The City 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.
3. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

City of Marshall
DOCKET NO. 2008-1548-MLM-E
Page 4

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

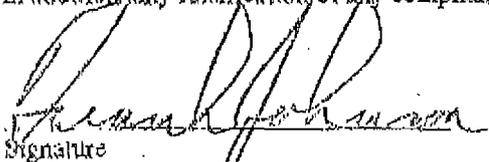
10/3/2009
Date

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

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

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

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


Signature

9-24-09
Date

Frank Johnson
Name (Printed or typed)
Authorized Representative of
City of Marshall

City Manager
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph I of this Agreed Order.