

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0906-MSW-E **TCEQ ID:** RN105595235 **CASE NO.:** 37752

RESPONDENT NAME: Richard C. Apodaca and Willie Jenkins

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"/> IMMEDIATE 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 AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Apodaca Inert Fill Site, southeast corner of the intersection of Joe Battle Boulevard and Pellicano Drive, approximately one block east of intersection on Pellicano Drive, El Paso, El Paso County</p> <p>TYPE OF OPERATION: Inert material fill site</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on April 29, 2009, alleging unauthorized sorting and storage of municipal solid waste. 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 November 23, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Clinton Sims, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-6933; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Richard C. Apodaca, Owner and Mr. Willie Carl Jenkins, CEO, Apodaca Inert Fill Site, 2563 Trawood Drive, El Paso, Texas 79936 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: April 29, 2009</p> <p>Date of Investigation Relating to this Case: May 6, 2009</p> <p>Date of NOV/NOE Relating to this Case: May 26, 2009 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WASTE</p> <p>Allowed unauthorized disposal of municipal solid waste ("MSW"). Specifically, the Respondents allowed disposal of approximately 711 cubic yards of MSW [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p>Total Assessed: \$1,050</p> <p>Total Deferred: \$210 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$140 (remaining \$700 due in 7 monthly payments of \$100 each)</p> <p>Site Compliance History Classification <input 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>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease the unauthorized storage, processing and disposal of any additional MSW at the Site;</p> <p>b. Within 30 days after the effective date of this Agreed Order, remove all MSW at the Site and dispose of the waste at an authorized facility; and</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.</p>

Additional ID No(s): 0



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	26-May-2009	Screening	5-Jun-2009	EPA Due	
	PCW	9-Jun-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Richard C. Apodaca and Willie Jenkins		
Reg. Ent. Ref. No.	RN105595235		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37752	No. of Violations	1
Docket No.	2009-0908-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Clinton Sims
		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	\$1,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		
Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7 \$50
Notes	Enhancement for one NOV with same or similar violations.	
Culpability	No 0.0% Enhancement	Subtotal 4 \$0
Notes	The Respondents do not meet the culpability criteria.	
Good Faith Effort to Comply Total Adjustments		Subtotal 5 \$0
Economic Benefit	0.0% Enhancement*	Subtotal 6 \$0
<small>Total EB Amounts</small>	\$163	
<small>Approx. Cost of Compliance</small>	\$4,098	<small>*Capped at the Total EB \$ Amount</small>
SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,050
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment \$0
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>		
Notes		
	Final Penalty Amount	\$1,050
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty \$1,050
DEFERRAL	20.0% Reduction	Adjustment -\$210
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>		
Notes	Deferral offered for expedited settlement.	
PAYABLE PENALTY		\$840

Screening Date 5-Jun-2009

Docket No. 2009-0906-MSW-E

PCW

Respondent Richard C. Apodaca and Willie Jenkins

Policy Revision 2 (September 2002)

Case ID No. 37752

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105595235

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

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 judgments 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) 5%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one NOV with same or similar violations.

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

Screening Date 5-Jun-2009	Docket No. 2009-0906-MSW-E	PCW	
Respondent Richard C. Apodaca and Willie Jenkins	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 37752 -	<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN105595235			
Media [Statute] Municipal Solid Waste			
Enf. Coordinator Clinton Sims			
Violation Number <input type="text" value="1"/>			
Rule Cite(s)	30 Tex. Admin. Code § 330.15(c)		
Violation Description	Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, the Respondents allowed disposal of approximately 711 cubic yards of MSW.		
Base Penalty		<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix			
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"/>	
Percent		<input type="text" value="0%"/>	
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as 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"/>		<input type="text" value="30"/> Number of violation days	
<small>mark only one with an x</small>	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="\$1,000"/>	
One quarterly event is recommended from the May 6, 2009 investigation date to the June 5, 2009 screening date.			
Good Faith Efforts to Comply		<input type="text" value="0.0%"/> Reduction	
		<input type="text" value="\$0"/>	
<small>Before NOV NOV to EOPRP/Settlement Offer</small>			
Extraordinary	<input type="text"/>		
Ordinary	<input type="text"/>		
N/A	<input checked="" type="checkbox"/>	<small>(mark with x)</small>	
Notes	The Respondents do not meet the 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="\$163"/>		Violation Final Penalty Total <input type="text" value="\$1,050"/>	
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$1,050"/>	

Economic Benefit Worksheet

Respondent Richard C. Apodaca and Willie Jenkins
Case ID No. 37752
Reg. Ent. Reference No. RN105595235
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	\$4,098	6-May-2009	20-Feb-2010	0.79	\$163	n/a	\$163
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and properly dispose of the municipal solid waste at an authorized facility. 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

\$4,098

TOTAL

\$163

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603392838	Jenkins, Willie	Classification:	Rating:
Regulated Entity:	RN105595235	APODACA INERT FILL SITE	Classification:	Site Rating:

ID Number(s):

Location: SE CORNER OF INTERSECTION OF JOE BATTLE BLVD
AND PELLICANO DR; APPROX 1 BLOCK E OF
INTERSECTION ON PELLICANO DR, EL PASO

TCEQ Region: REGION 06 - EL PASO

Date Compliance History Prepared: June 12, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 12, 2004 to June 12, 2009

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

Name: Clinton Sims Phone: 239 - 6933

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/operator of the site during the compliance period? | No |
| 3. If Yes, who is the current owner/operator? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)/operator(s) ? | N/A |
| 5. When did the change(s) in owner or operator occur? | N/A |
| 6. | |

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 09/08/2008 (689489)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 09/02/2008 (689489)

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 330, SubChapter A 330.15(c)		
Description:	At the time of the investigation, the facility failed to prevent dumping of Municipal Solid Waste without the written authorization of the commission.		
- 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

Compliance History Report

Customer/Respondent/Owner-Operator: CN600398556 APODACA, RICHARD C Classification: AVERAGE Rating: 3.01
 Regulated Entity: RN105595235 APODACA INERT FILL SITE Classification: Site Rating:

ID Number(s):

Location: SE CORNER OF INTERSECTION OF JOE BATTLE BLVD AND PELLICANO DR; APPROX 1 BLOCK E OF INTERSECTION ON PELLICANO DR, EL PASO

TCEQ Region: REGION 06 - EL PASO

Date Compliance History Prepared: June 12, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 12, 2004 to June 12, 2009

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

Name: Clinton Sims Phone: 239 - 6933

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6.

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 09/08/2008 (689489)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 09/02/2008 (689489)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
Description: At the time of the investigation, the facility failed to prevent dumping of Municipal Solid Waste without the written authorization of the commission.
- 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
RICHARD C. APODACA AND
WILLIE JENKINS
RN105595235

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0906-MSW-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 Richard C. Apodaca and Willie Jenkins ("the Respondents") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own and operate an inert material fill site at southeast corner of the intersection of Joe Battle Boulevard and Pellicano Drive, approximately one block east of intersection on Pellicano Drive in El Paso, El Paso 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.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about May 31, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Fifty Dollars (\$1,050) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid One Hundred Forty Dollars (\$140) of the administrative penalty and Two Hundred Ten Dollars (\$210) is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondents to pay all or part of the deferred penalty.

The remaining amount of Seven Hundred Dollars (\$700) of the administrative penalty shall be payable in seven monthly payments of One Hundred Dollars (\$100) each. The next 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 the Respondents fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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 the Respondents to meet the payment schedule of this Agreed Order constitutes the failure by the Respondents to timely and satisfactorily comply with all the terms of this Agreed Order.

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 the Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondents are alleged to have allowed unauthorized disposal of municipal solid waste ("MSW"), in violation of 30 TEX. ADMIN. CODE § 330.15(c), as documented during an investigation conducted on May 6, 2009. Specifically, the Respondents allowed disposal of approximately 711 cubic yards of MSW.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' 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: Richard C. Apodaca and Willie Jenkins, Docket No. 2009-0906-MSW-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. It is further ordered that the Respondents shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease the unauthorized storage, processing and disposal of any additional MSW at the Site;
 - b. Within 30 days after the effective date of this Agreed Order, remove all MSW at the Site and dispose of the waste at an authorized facility; and
 - 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. 3.a. and 3.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of 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:

Waste Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are 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.
5. If the Respondents fail 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, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this 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 the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents 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.
8. 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.

9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director


10/23/2009
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.

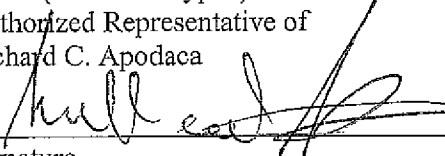
In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

9/04/09
Date

RICHARD C. APODACAS
Name (Printed or typed)

OWNER
Title

Authorized Representative of
Richard C. Apodaca

Signature

9-4-09
Date

WILLIE CARL S. JENKINS SA
Name (Printed or typed)
Authorized Representative of
Willie Jenkins

CEO
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 1 of this Agreed Order.