

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1807-MLM-E TCEQ ID: RN105114946 CASE NO.: 34523
RESPONDENT NAME: RAY CARPENTER DBA CARPENTER DIRT WORK

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 type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 3005 Central Texas Expressway, Lampasas, Lampasas County

TYPE OF OPERATION: Composting facility

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: Three complaints were received, alleging that there were animal carcasses at the Facility which were causing bad odors and attracting vectors. There is no record of additional pending enforcement actions regarding this facility location.

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

COMMENTS RECEIVED: The *Texas Register* comment period expired November 23, 2009. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney:** Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
- TCEQ Enforcement Coordinator:** Mr. Clinton Sims, Waste Enforcement Section, MC 128, (512) 239-6933
- TCEQ Regional Contact:** Mr. Frank Burleson, Waco Regional Office, MC R-09, (254) 761-3001
- Respondent:** Mr. Ray Carpenter, Owner, Carpenter Dirt Work, P.O. Box 389, Lampasas, Texas 76550
- 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 type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: June 7, 2007</p> <p>Dates of Investigation Relating to this Case: June 8, 2007, and June 18, 2007</p> <p>Dates of NOEs Relating to this Case: August 6, 2007; July 16, 2007</p> <p>Background Facts: The EDRP was filed February 22, 2008. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on September 16, 2009.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>MLM:</p> <ol style="list-style-type: none"> Failed to have a fire prevention and suppression plan [30 TEX. ADMIN. CODE § 328.5(h)]. Failed to establish and maintain financial assurance for the closure of a composting facility that stores combustible materials outdoors [30 TEX. ADMIN. CODE § 328.5(d)]. Failed to prevent the discharge of wastewater into or adjacent to water in the state without authorization from the Commission [30 TEX. ADMIN. CODE § 330.303(a) and TEX. WATER CODE § 26.121(a)(1)]. 	<p>Total Assessed: \$4,257</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: \$232/\$4,025</p> <p>The Respondent paid \$232 of the administrative penalty. The remaining amount of \$4,025 shall be payable in 35 monthly payments of \$115 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>Corrective Actions Taken: The Executive Director recognizes that the Respondent ceased accepting new material for composting in March 2008.</p> <p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 15 days, implement procedures which will prevent wastewater discharges into or adjacent to water in the state. Within 30 days: <ol style="list-style-type: none"> Develop and implement a fire prevention and suppression plan that shall be made available to the local fire prevention authority having jurisdiction over the Facility for review and coordination; and Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility; or In lieu of 2.a and 2.b., remove all accumulated materials and dispose at an authorized facility or apply to Facility property for agricultural purposes. Within 45 days, submit written certification and demonstrating compliance with these Ordering Provisions.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ

DATES	Assigned	31-Jul-2007	Screening	28-Aug-2007	EPA Due	
	PCW	27-Dec-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Ray Carpenter dba Carpenter Dirt Work
Reg. Ent. Ref. No.	RN105114946
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34523	No. of Violations	3
Docket No.	2007-1807-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Clinton Sims
Multi-Media	Water Quality	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 \$2,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 7% Enhancement Subtotals 2, 3, & 7 \$175

Notes: The Respondent received one NOV with same or similar violations and one NOV without same or similar violations.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes: The Respondent does not meet the culpability criteria.

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

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

Total EB Amounts \$1,739 0% Enhancement* Subtotal 6 \$0
Approx. Cost of Compliance \$3,582 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$2,675

OTHER FACTORS AS JUSTICE MAY REQUIRE 60% Adjustment \$1,582

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

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

Final Penalty Amount \$4,257

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$4,257

DEFERRAL 0% Reduction Adjustment \$0

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY \$4,257

Screening Date 28-Aug-2007

Docket No. 2007-1807-MLM-E

PCW

Respondent Ray Carpenter dba Carpenter Dirt Work

Policy Revision 2 (September 2002)

Case ID No. 34523

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105114946

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	1	2%
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%
<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) 7%

>> 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 and one NOV without same or similar violations.

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

Screening Date 28-Aug-2007

Docket No. 2007-1807-MLM-E

PCW

Respondent Ray Carpenter dba Carpenter Dirt Work

Policy Revision 2 (September 2002)

Case ID No. 34523

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105114946

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 328.5(h)

Violation Description Failed to have a fire prevention and suppression plan. Specifically, the Respondent managed combustible materials and did not make a fire prevention plan available to the local fire prevention authority.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed protective levels as a result of this violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

81 Number of violation days

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

Violation Base Penalty \$500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$44

Violation Final Penalty Total \$851

This violation Final Assessed Penalty (adjusted for limits) \$851

Economic Benefit Worksheet

Respondent Ray Carpenter dba Carpenter Dirt Work
Case ID No. 34523
Reg. Ent. Reference No. RN105114946
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,000	8-Jun-2007	26-Apr-2008	0.9	\$44	n/a	\$44

Notes for DELAYED costs

Estimated cost to draft a site specific fire prevention and suppression plan. Date Required is the investigation date and Final Date is the expected date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$44

Screening Date 28-Aug-2007	Docket No. 2007-1807-MLM-E	PCW
Respondent Ray Carpenter dba Carpenter Dirt Work	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34523	<i>PCW Revision June 26, 2007</i>	
Reg. Ent. Reference No. RN105114946		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Clinton Sims		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	30 Tex. Admin. Code § 328.5(d)	
Violation Description	Failed to establish and maintain financial assurance for the closure of a composting facility that stores combustible materials outdoors. Specifically, the Respondent did not have financial assurance at the time of the investigation.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
		Major	Moderate	Minor	
	Release	Actual	Potential	Percent	

>> Programmatic Matrix

	Falsification				
		Major	Moderate	Minor	
	Percent	<input type="text" value="10%"/>			
Matrix Notes	100% of the rule requirement was not met.				

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	<input type="text" value="1"/>	

Violation Base Penalty

One single event is recommended.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Ray Carpenter dba Carpenter Dirt Work
Case ID No. 34523
Reg. Ent. Reference No. RN105114946
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
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No commas or \$

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,582	8-Jun-2007	26-Apr-2008	1.0	\$79	\$1,582	\$1,661
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost of obtaining financial assurance for the facility. Date Required is the investigation date and the Final Date is the expected date of compliance.

Approx. Cost of Compliance

\$1,582

TOTAL

\$1,661

Screening Date 28-Aug-2007	Docket No. 2007-1807-MLM-E	PCW
Respondent Ray Carpenter dba Carpenter Dirt Work	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34523	<i>PCW Revision June 26, 2007</i>	
Reg. Ent. Reference No. RN105114946		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Clinton Sims		
Violation Number <input type="text" value="3"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 330.303(a) and Tex. Water Code § 26.121(a)(1)"/>	
Violation Description	<input type="text" value="Failed to prevent the discharge of wastewater into or adjacent to water in the state without authorization from the Commission. Specifically, wastewater was discharging from the final holding basin off site into a small drainage basin."/>	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
		Major	Moderate		Minor
	Release	<input type="text"/>	<input type="text"/>		<input type="text" value="X"/>
	Actual	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>	

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Ray Carpenter dba Carpenter Dirt Work
Case ID No. 34523
Reg. Ent. Reference No. RN105114946
Media Municipal Solid Waste
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,000	5-Sep-2007	8-May-2008	0.7	\$34	n/a	\$34

Notes for DELAYED costs

Estimated cost to implement procedures to prevent unauthorized wastewater discharges. The Date Required is the investigation date and the Final Date is the expected date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$1,000	TOTAL	\$34
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Compliance History

Customer/Respondent/Owner-Operator: CN603123688 Ray Carpenter dba Carpenter Dirt Work Classification: AVERAGE Rating: 3.01

Regulated Entity: RN105114946 CARPENTER DIRT WORK Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s): MUNICIPAL SOLID WASTE PROCESSING REGISTRATION 47035

Location: 3005 CENTRAL TEXAS EXPWY, LAMPASAS, TX, 76550 Rating Date: September 01 06 Repeat Violator: NO

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: August 24, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 24, 2002 to August 24, 2007

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

Name: Clinton Sims Phone: (512)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 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 07/13/2007 (567608)
 - 2 07/13/2007 (567562)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 06/15/2007 (561990)
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 101, SubChapter A 101.4
5C THC Chapter 382, SubChapter A 382.085(a)
5C THC Chapter 382, SubChapter A 382.085(b)
 - Description: Nuisance odors from a composting facility.
 - Date: 07/16/2007 (567562)
 - Self Report? NO Classification: Moderate
 - Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
30 TAC Chapter 330, SubChapter L 330.303(a)
 - Description: Failure by the entity to prevent the discharge of wastewater into or adjacent to water in the state without authorization from 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 RAY CARPENTER
DBA CARPENTER DIRT WORK;
RN105114946

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2007-1807-MLM-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Ray Carpenter dba Carpenter Dirt Work ("Mr. Carpenter") under the authority of TEX. WATER CODE chs. 7 and 26, and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Carpenter appear before the Commission and together stipulate that:

1. Mr. Carpenter owns and operates a composting facility located at 3005 Central Texas Expressway, Lampasas, Lampasas County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361, TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Mr. Carpenter agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Carpenter is subject to the Commission's jurisdiction.
4. Mr. Carpenter received notice of the violations alleged in Section II ("Allegations"), Paragraph 1, on or about August 11, 2007.
5. Mr. Carpenter received notice of the violations alleged in Section II ("Allegations"), Paragraph 2, on or about July 21, 2007.
6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Carpenter of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

7. An administrative penalty in the amount of four thousand two hundred fifty-seven dollars (\$4,257.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Carpenter paid two hundred thirty-two dollars (\$232.00) of the administrative penalty. The remaining amount of four thousand twenty-five dollars (\$4,025.00) of the administrative penalty shall be payable in 35 monthly payments of one hundred fifteen dollars (\$115.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Mr. Carpenter 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, Mr. Carpenter's failure to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Carpenter to timely and satisfactorily comply with all of the terms of this Agreed Order
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 Mr. Carpenter 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 Mr. Carpenter has not accepted new material for composting since March 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 Mr. Carpenter 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

1. During an inspection conducted on June 8, 2007, a TCEQ Waco Regional Office investigator documented that Mr. Carpenter violated:
 - a. 30 TEX. ADMIN. CODE § 328.5(h) by failing to have a fire prevention and suppression plan. Specifically, the Respondent managed combustible materials and did not make a fire prevention plan available to the local fire prevention authority.
 - b. 30 TEX. ADMIN. CODE § 328.5(d) by failing to establish and maintain financial assurance for the closure of a composting facility that stores combustible materials outdoors. Specifically, the Respondent did not have financial assurance at the time of the investigation.
2. During an inspection conducted on June 18, 2007, a TCEQ Waco Regional Office investigator documented that Mr. Carpenter violated 30 TEX. ADMIN. CODE § 330.303(a) and TEX. WATER CODE § 26.121(a)(1) by failing to prevent the discharge of wastewater into or adjacent to water in the state without authorization from the Commission. Specifically, wastewater was discharging from the final holding basin off site into a small drainage basin.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Carpenter pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Carpenter's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Ray Carpenter dba Carpenter Dirt Work, Docket No. 2007-1807-MLM-E" to:

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

2. Mr. Carpenter shall undertake the following technical requirements:
- a. Within 15 days after the effective date of this Agreed Order, Mr. Carpenter shall implement procedures which will prevent wastewater discharges into or adjacent to water in the state.
 - b. Within 30 days after the effective date of this Agreed Order, Mr. Carpenter shall:
 - i. Develop and implement a fire prevention and suppression plan that shall be made available to the local fire prevention authority having jurisdiction over the Facility for review and coordination, in accordance with 30 TEX. ADMIN. CODE § 328.5(h);
 - ii. Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility, in accordance with 30 TEX. ADMIN. CODE § 328.5(d) to:

Financial Assurance Team, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - iii. In lieu of 2.b.i. through 2.b.ii., remove all accumulated materials and dispose at an authorized facility or apply to Mr. Carpenter's property for agricultural purposes.
 - c. Within 45 days after the effective date of this Agreed Order, Mr. Carpenter shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

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

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

and

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

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Carpenter. Mr. Carpenter is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. Carpenter fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Carpenter's failure to comply is not a violation of this Agreed Order. Mr. Carpenter shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Carpenter shall notify the Executive Director within seven days after Mr. Carpenter becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Carpenter shall be made in writing to the Executive Director. Extensions are not effective until Mr. Carpenter receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Carpenter in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

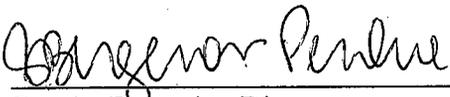
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Agreed Order to Mr. Carpenter, or three days after the date on which the Commission mails notice of the Order to Mr. Carpenter, 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

10/29/09

Date

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

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

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

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



Signature

9-16-09

Date

Ray Carpenter

Name (Printed or typed)
Authorized representative of
Ray Carpenter dba Carpenter Dirt Work

Owner

Title