EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1372-MSW-E **TCEQ ID:** RN105163950 **CASE NO.:** 36468

RESPONDENT NAME: Eagle Disposal Company, Inc.

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
X MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Eagle Waste Disposal Company, 110 Cedar Street, Hearne, Robertson County and property located one mile east of Highway 339 on County Road 656, near Kosse, Limestone County

TYPE OF OPERATION: Solid waste hauling business

SMALL BUSINESS: __X__ Yes ___ No

OTHER SIGNIFICANT MATTERS: A complaint was received on June 19, 2008, alleging illegal disposal of municipal solid waste. There is one record of additional pending enforcement action regarding this facility location, Docket No. 2008-1371-MSW-E.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on February 16, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Danielle Porras, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-2602; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387
Respondent: Mr. Sheldon Ellis, President, Eagle Disposal Company, Inc., P.O. Box 465, Hearne, Texas 77859
Mr. Timothy Henderson, General Manager, Eagle Disposal Company, Inc., P.O. Box 465, Hearne, Texas 77859
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: _X_ Complaint __ Routine __ Enforcement Follow-up _X_ Records Review **Date(s) of Complaints Relating to this Case:** June 19, 2008 **Date of Investigation Relating to this Case:** July 21, 2008 **Date of NOV/NOE Relating to this Case:** August 12, 2008 (NOE) **Background Facts:** This was a routine record review that was the result of a complaint. **WASTE** Failure to dispose of waste at a facility authorized to receive the waste. Specifically, approximately 680 cubic yards of waste was disposed of at a site not authorized to receive the waste [30 TEX. ADMIN. CODE §§ 330.103(b) and 330.15(a) and TEX. WATER CODE § 26.121(a)(1)].	**Total Assessed:** $3,888 **Total Deferred:** $777 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $3,111 **Site Compliance History Classification** _X_ **High** __ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 15 days after the effective date of this Agreed Order, develop and implement procedures to prevent the disposal of solid waste at unauthorized facilites; and b. Within 30 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 Provision a.

Additional ID No(s).: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision June 12, 2008*

TCEQ

DATES					
Assigned	11-Aug-2008				
PCW	3-Oct-2008	Screening	25-Aug-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Eagle Disposal Company, Inc.		
Reg. Ent. Ref. No.	RN105163950		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36468	No. of Violations	1
Docket No.	2008-1372-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		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

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: There are not any previous NOVs or orders during the last five years.

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* $0

Economic Benefit 0.0% Enhancement* — *Subtotal 6* $0

Total EB Amounts $2,927
Approx. Cost of Compliance $3,747
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $1,000

OTHER FACTORS AS JUSTICE MAY REQUIRE 288.8% — *Adjustment* $2,888

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Other factors adjustment to recover avoided costs.

Final Penalty Amount $3,888

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $3,888

DEFERRAL 20.0% Reduction — *Adjustment* -$777

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $3,111

Screening Date 25-Aug-2008 **Docket No.** 2008-1372-MSW-E **PCW**

Respondent Eagle Disposal Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 36468

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105163950

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Compliance History Worksheet

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

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

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

There are not any previous NOVs or orders during the last five years.

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

Screening Date 25-Aug-2008 **Docket No.** 2008-1372-MSW-E **PCW**

Respondent Eagle Disposal Company, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 36468 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN105163950

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 330.103(b) and 330.15(a) and Tex. Water Code § 26.121(a)(1)

Violation Description Failed to dispose of waste at a facility authorized to receive the waste, as documented during a record review conducted on July 21, 2008. Specifically, approximately 680 cubic yards of waste was disposed of at a site not authorized to receive the waste.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment has been exposed to insignificant amounts of pollutants which would not exceed protective levels.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 — 35 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the July 21, 2008 record review to the August 25, 2008 screening date.

Good Faith Efforts to Comply

0.0% Reduction — $0

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

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

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $2,927

Statutory Limit Test

Violation Final Penalty Total $3,888

This violation Final Assessed Penalty (adjusted for limits) $3,888

Economic Benefit Worksheet

Respondent Eagle Disposal Company, Inc.
Case ID No. 36468
Reg. Ent. Reference No. RN105163950
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				0.00	$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)	$1,000	21-Jul-2008	29-Apr-2009	0.77	$39	n/a	$39

Notes for DELAYED costs: Estimated cost to develop and implement procedures to ensure that wastes are transported to an authorized site, and to develop standard operating procedures which are to be followed by employees in the transport and disposal of waste. The Date Required is the record review 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]	$2,747	1-May-2008	11-Jun-2008	1.03	$141	$2,747	$2,888
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs: The avoided cost was calculated as the difference between the actual cost paid by the Respondent for disposal of waste at an unauthorized facility ($1,647) and the estimated cost for disposal at an authorized disposal facility ($4,394). Date Required is the first date the Respondent disposed of waste at the site. Final Date is the last date the Respondent disposed of waste at the site.

Approx. Cost of Compliance $3,747 — **TOTAL** $2,927

Compliance History

Customer/Respondent/Owner-Operator:	CN601728728	Eagle Disposal Company, Inc.	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN105163950	ONE MILE EAST OF HWY 339 ON COUNTY RD 656	Classification: HIGH	Site Rating: 0.00

ID Number(s):	TIRES	REGISTRATION	6200398
	TIRES	REGISTRATION	6200399

Location:	ONE MILE EAST OF HWY 339 ON COUNTY RD 656, KOSSE, LIMESTONE COUNTY	Rating Date: 9/1/2008	Repeat Violator: NO

TCEQ Region:	REGION 09 - WACO
Date Compliance History:	September 30, 2008
Agency Decision Requiring Compliance	Enforcement
Compliance Period:	September 30, 2003 to September 30, 2008

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

Name: Danielle Porras Phone: (512) 239-2602

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.)

N/A

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
EAGLE DISPOSAL COMPANY, INC.	§	
RN105163950	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-1372-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 Eagle Disposal Company, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a solid waste hauling business at 110 Cedar Street, Hearne, Robertson County, Texas. The Respondent disposed of solid waste at a site located one mile east of Highway 339 on County Road 656 near Kosse, Limestone County that is not authorized to receive the waste.

2. The Respondent's business involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 17, 2008.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Three Thousand Eight Hundred Eighty-Eight Dollars ($3,888) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand One Hundred Eleven Dollars ($3,111) of the administrative penalty and Seven Hundred Seventy-Seven Dollars ($777) is deferred contingent upon the Respondent'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 Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

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 Respondent 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 Respondent has 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 a transporter of municipal solid waste, the Respondent is alleged to have failed to dispose of waste at a facility authorized to receive the waste, in violation of 30 TEX. ADMIN. CODE §§ 330.103(b) and 330.15(a) and TEX. WATER CODE § 26.121(a)(1), as documented during a record review conducted on July 21, 2008. Specifically, approximately 680 cubic yards of waste was disposed of at a site not authorized to receive the waste.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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: Eagle Disposal Company, Inc., Docket No. 2008-1372-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. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Within 15 days after the effective date of this Agreed Order, develop and implement procedures to prevent the disposal of solid waste at unauthorized facilites; and

   b. Within 30 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 No. 2.a.

   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."

   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
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the operations referenced in this Agreed Order.

4. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 the Respondent 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 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.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

Date 1/22/2009

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

12/1/2008
Date

TIMOTHY HENDERSON
Name (Printed or typed)
Authorized Representative of
Eagle Disposal Company, Inc.

GENERAL 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 1 of this Agreed Order.