

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1646-MLM-E TCEQ ID: RN105007025 CASE NO.: 34769
RESPONDENT NAME: JAMES LUCKEY AND JOHN LUCKEY

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 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: Private Road 5210, Buna, Jasper County</p> <p>TYPE OF OPERATION: Unauthorized disposal site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 23, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Benjamin O. Thompson Litigation Division, MC 175, (512) 239-1297 Ms. Lená 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. Derek Eades, Beaumont Regional Office, MC R-10, (409) 899-8705 Respondent: Mr. James Luckey and Mr. John Luckey, P.O. Box 123, Buna, Texas 77612 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:</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 Complaint Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: March 23, 2007 and May 7, 2007</p> <p>Date of NOE Relating to this Case: September 5, 2007</p> <p>Background Facts: The EDRP was filed March 18, 2008, and mailed to each Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrappers sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondents received notice of the EDRP. The Respondents failed to answer the EDRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent has not submitted documentation to demonstrate compliance.</p> <p>MLM</p> <p>1. Failed to prevent the unauthorized disposal of municipal solid waste [30 TEX. ADMIN. CODE § 330.15(c)].</p> <p>2. Failed to comply with the general prohibition on outdoor burning [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$4,450</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 Due to General Revenue: \$4,450</p> <p>This is a Default Order. The Respondents have not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</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: James Luckey <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: John Luckey <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>Technical Requirements: The Respondents shall undertake the following technical requirements:</p> <p>1. Immediately:</p> <p>a. Cease all unauthorized burning of waste at the Site; and</p> <p>b. Cease disposing of any additional waste at the Site.</p> <p>2. Within 30 days, remove all municipal solid waste and dispose of the wastes at an authorized facility.</p> <p>3. Within 45 days, submit written certification to demonstrate compliance with these Ordering Provisions</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

DATES	Assigned	10-Sep-2007	Screening	12-Oct-2007	EPA Due	
	PCW	29-Jan-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	James Luckey and John Luckey		
Reg. Ent. Ref. No.	RN105007025		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	34769	No. of Violations	2	
Docket No.	2007-1646-MLM-E	Order Type	1660	
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Clinton Sims	
Multi-Media	Air	EC's Team	EnforcementTeam 7	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$4,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	10% Enhancement	Subtotals 2, 3, & 7	\$400
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Notes	The Respondent received two NOV's with same or similar violations.
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Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	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.	

	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$104	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$700	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,400
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OTHER FACTORS AS JUSTICE MAY REQUIRE	3%	Adjustment	\$50
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended adjustment to capture the avoided cost benefit associated with the violations.
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Final Penalty Amount	\$4,450
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,450
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DEFERRAL	0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral offered for expedited settlement
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PAYABLE PENALTY	\$4,450
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Screening Date 12-Oct-2007

Docket No. 2007-1646-MLM-E

PCW

Respondent James Luckey and John Luckey

Policy Revision 2 (September 2002)

Case ID No. 34769

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN105007025

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)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 10%

>> 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 two NOVs with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 12-Oct-2007	Docket No. 2007-1646-MLM-E	PCW
Respondent James Luckey and John Luckey		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 34769		<i>PCW Revision September 19, 2007</i>
Reg. Ent. Reference No. RN105007025		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Clinton Sims		
Violation Number	1	
Rule Cite(s)	30 Tex. Admin. Code § 330.15(c)	
Violation Description	Failed to prevent the unauthorized disposal of municipal solid waste. Specifically, the Respondent allowed approximately 50 cubic yards of roofing singles to be disposed of on the ground at the site.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Major	Moderate	Minor	
Falsification				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 protective levels.

Adjustment

Violation Events

Number of Violation Events **Number of violation days**

	daily	
	monthly	
<i>mark only one with an x</i>	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty

Three quarterly events are recommended from the March 23, 2007 investigation date to the October 12, 2007 screening date.

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 James Luckey and John Luckey

Case ID No. 34769

Reg. Ent. Reference No. RN105007025

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	\$650	23-Mar-2007	12-Jun-2008	1.2	\$40	n/a	\$40
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the municipal solid waste and dispose of it at an approved municipal solid waste disposal site (\$13 per cubic yard). 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

\$650

TOTAL

\$40

Screening Date 12-Oct-2007	Docket No. 2007-1646-MLM-E	PCW
Respondent James Luckey and John Luckey	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34769	<i>PCW Revision September 19, 2007</i>	
Reg. Ent. Reference No. RN105007025		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Clinton Sims		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)"/>	
Violation Description	<input type="text" value="Failed to comply with the general prohibition on outdoor burning. Specifically, the Respondent burned approximately 10 scrap tires on the ground at the site."/>	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Matrix Notes	<input type="text" value="Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed protective levels."/>				

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"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount <input type="text" value="\$64"/>	Violation Final Penalty Total <input type="text" value="\$1,113"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,113"/>	

Economic Benefit Worksheet

Respondent: James Luckey and John Luckey

Case ID No.: 34769

Reg. Ent. Reference No.: RN105007025

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)

Disposal	\$50	23-Mar-2007	12-Jun-2008	1.2	\$3	\$61	\$64
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

Estimated cost to properly dispose of approximately 10 scrap tires that were disposed of by burning (\$5 per tire).
The Date Required is the investigation date and the Final Date is the expected date of compliance.

Approx. Cost of Compliance

\$50

TOTAL

\$64

Compliance History

Customer/Respondent/Owner-Operator: CN603262536 LUCKEY, JAMES Classification: AVERAGE Rating: 6.00
Regulated Entity: RN105007025 LUCKEY PROPERTY Classification: AVERAGE Site Rating: 6.00
ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 455100056
Location: PR 5210, BUNA, TX, 77612
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: November 05, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 05, 2002 to November 05, 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 09/05/2007 (555617)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 08/01/2006 (485735)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter A 330.15
Description: Failure to properly dispose of waste.
Date: 09/08/2006 (511853)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter A 330.15
Description: Failure to properly dispose of waste.
 - 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

CH-1

Compliance History

Customer/Respondent/Owner-Operator:	CN603069931 LUCKEY, JOHN	Classification: AVERAGE	Rating: 6.00
Regulated Entity:	RN105007025 LUCKEY PROPERTY	Classification: AVERAGE	Site Rating: 6.00
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER	455100056
Location:	PR 5210, BUNA, TX, 77612	Rating Date: September 01 07	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	October 11, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 11, 2002 to October 11, 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? | <u>N/A</u> |
| 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 09/05/2007 (555617)
 - N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	08/01/2006 (485735)	Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 330, SubChapter A 330.15	Description:	Failure to properly dispose of waste.	
Date:	09/08/2006 (511853)	Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 330, SubChapter A 330.15	Description:	Failure to properly dispose of waste.	
 - F. Environmental audits.
 - N/A
 - G. Type of environmental management systems (EMSs).
 - N/A
 - H. Voluntary on-site compliance assessment dates.
 - I. Participation in a voluntary pollution reduction program.
 - N/A
 - J. Early compliance.
 - N/A
- Sites Outside of Texas
N/A

CH-2

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING JAMES LUCKEY
AND JOHN LUCKEY;
RN105007025

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2007-1646-MLM-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondents made the subject of this Order are James Luckey and John Luckey.

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

FINDINGS OF FACT

1. James Luckey and John Luckey operate an unauthorized disposal site located at Private Road 5210 in Jasper County, Texas (the "Site").
2. The Site involves the management and/or disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361 and consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During investigations conducted on March 23, 2007, and May 7, 2007, a TCEQ Beaumont Regional Office investigator documented that James Luckey and John Luckey:
 - a. Failed to prevent the unauthorized disposal of municipal solid waste. Specifically, James Luckey and John Luckey allowed approximately 50 cubic yards of roofing shingles to be disposed of on the ground at the site.
 - b. Failed to comply with the general prohibition on outdoor burning. Specifically, James Luckey and John Luckey burned approximately 10 scrap tires on the ground at the site.

4. James Luckey and John Luckey received notice of the violations on or about September 10, 2007.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of James Luckey and John Luckey" (the "EDPRP") in the TCEQ Chief Clerk's office on March 18, 2008.
6. By letter dated March 18, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served James Luckey and John Luckey with notice of the EDPRP. The United States Postal Service returned the wrappers sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that James Luckey and John Luckey each received notice of the EDPRP.
7. More than 20 days have elapsed since James Luckey and John Luckey received notice of the EDPRP, provided by the Executive Director. James Luckey and John Luckey failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, James Luckey and John Luckey are subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., James Luckey and John Luckey failed to prevent the unauthorized disposal of municipal solid waste, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Finding of Fact No. 3.b., James Luckey and John Luckey failed to comply with the general prohibition on outdoor burning, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served James Luckey and John Luckey with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 7, James Luckey and John Luckey failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE

§ 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against James Luckey and John Luckey and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against James Luckey and John Luckey for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of four thousand four hundred fifty dollars (\$4,450.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. James Luckey and John Luckey are assessed an administrative penalty in the amount of four thousand four hundred fifty dollars (\$4,450.00) for violations of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and rules of the TCEQ. The payment of this administrative penalty and James Luckey and John Luckey's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: James Luckey and John Luckey; Docket No. 2007-1646-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. James Luckey and John Luckey shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, cease all unauthorized burning of waste at the Site;
 - b. Immediately upon the effective date of this Order, cease disposing of any additional waste at the Site;
 - c. Within 30 days after the effective date of this Order, remove all municipal solid waste and dispose of the wastes at an authorized facility; and
 - d. Within 45 days after the effective date of this Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c.

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
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon James Luckey and John Luckey. James Luckey and John Luckey are ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If James Luckey and John Luckey fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, James Luckey's or John Luckey's failure to comply is not a violation of this Order. James Luckey and John Luckey shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. James Luckey and John Luckey shall notify the Executive Director within seven days after James Luckey and John Luckey 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 Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by James Luckey or John Luckey shall be made in writing to the Executive Director. Extensions are not effective until James Luckey and John Luckey receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to James Luckey and John Luckey if the Executive Director determines that James Luckey and John Luckey have not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

