

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-0455-IHW-E TCEQ ID: RN102599719 CASE NO.: 29616

RESPONDENT NAME: VEOLIA ES TECHNICAL SOLUTIONS, L.L.C. FKA ONYX ENVIRONMENTAL SERVICES, L.L.C.

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 type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL 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 type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 7665 State Highway 73, Port Arthur, Jefferson County

TYPE OF OPERATION: commercial hazardous waste treatment, storage and disposal facility

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints associated with this enforcement action. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired June 22, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

SEP Coordinator: Ms. Sharon Blue, Litigation Division, MC 175, (512) 239-2223

TCEQ Enforcement Coordinator: Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492

TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838

Respondent: Mr. James M. Osborne, General Manager, Veolia ES Technical Solutions, L.L.C., P.O. Box 1238, Sheffield, MA 01257-1238

Respondent's Attorney: Mr. Greig R. Siedor, Chief Legal Officer, Veolia ES Technical Solutions, L.L.C. P.O. Box 1238, Sheffield, MA 01257-1238

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: N/A</p> <p>Dates of Investigation Relating to this Case: February 13-22, 2006</p> <p>Date of NOE Relating to this Case: April 21, 2006</p> <p>Background Facts: The EDRP was filed December 21, 2006. The Respondent filed an answer and the case was referred to SOAH. The Respondent signed the agreed order April 30, 2009.</p> <p>Current Compliance Status: No outstanding Technical Requirements.</p> <p>IHW:</p> <p>1. Failed to develop an adequate Waste Analysis Plan ("WAP") [30 TEX. ADMIN. CODE § 335.152(a)(1), 40 C.F.R. § 264.13(b), and Industrial and Hazardous Waste ("IHW") Permit No. 50212, Provision IV.A.].</p> <p>2. Failed to ship industrial mixed waste (incinerator ash and radioactive waste) to an authorized facility for disposal, and failed to prevent the acceptance of unauthorized waste that resulted in onsite waste management activities including storage and treatment [30 TEX. ADMIN. CODE § 335.2(a) and (b), 40 C.F.R. § 264.344(a), and IHW Permit No. 50212, Provision IV.B.3.b.].</p>	<p>Total Assessed: \$15,554</p> <p>Total Deferred: \$7,777</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input checked="" type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid to General Revenue: \$7,777</p> <p>The Respondent paid \$7,777 of the administrative penalty. The remaining amount of \$7,777 shall be conditionally offset by the completion of a Supplemental Environmental Project (SEP).</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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent implemented the following corrective measures at the Facility in response to this enforcement action:</p> <p>a. Disposed of the radioactive waste at an authorized facility on February 10, 2006; and</p> <p>b. Submitted a revised WAP on June 15, 2006.</p> <p>Ordering Provision:</p> <p>The Respondent shall implement and complete a SEP (See SEP Attachment A – West Port Arthur Home Energy Efficiency Project).</p>

Attachment A
Docket Number: 2006-0455-IHW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Veolia ES Technical Solutions, L.L.C. fka Onyx
Environmental Services, L.L.C.

Penalty Amount: Fifteen thousand five hundred fifty-four dollars (\$15,554)

SEP Offset Amount: Seven thousand seven hundred seven dollars (\$7,777)

Type of SEP: Pre-approved

Third-Party Recipient: **Southeast Texas Regional Planning Commission – West Port
Arthur Home Energy Efficiency Project**

Location of SEP: Jefferson County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **Southeast Texas Regional Planning Commission** for the *West Port Arthur Home Energy Efficiency Project* in Jefferson County as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, SEP funds will be used to conduct home energy audits and to assist low income residents in the West Port Arthur area by weatherizing their homes which will improve their homes' energy efficiency. SEP funds will be used to pay for the cost of caulking and insulating the homes and appliances as well as for replacing heating and cooling systems and major appliances with new energy efficient equipment. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

Implementation of this project will reduce residential fuel and electricity usage for heating and cooling. These reductions, in turn, will reduce emissions of particulate matter (PM), volatile organic compounds (VOC), and nitrogen oxides (NOx) associated with the combustion of fuel and generation of electricity.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

SETRPC
Attn: Bob Dickinson, Director, Transportation and Environmental Resources
South East Texas Regional Planning Commission
2210 Eastex Freeway
Beaumont, TX 77703

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) PCW Revision May 19, 2005

DATES	Assigned <input type="text" value="24-Apr-2006"/>	PCW <input type="text" value="09-Apr-2009"/>	Screening <input type="text" value="08-May-2006"/>	EPA Due <input type="text" value="13-Jul-2006"/>
--------------	---	--	--	--

RESPONDENT/FACILITY INFORMATION	
Respondent <input type="text" value="Veolia ES Technical Solutions, L.L.C."/>	
Reg. Ent. Ref. No. <input type="text" value="RN102599719"/>	
Facility/Site Region <input type="text" value="10-Beaumont"/>	Major/Minor Source <input type="text" value="Major Source"/>

CASE INFORMATION	
Enf./Case ID No. <input type="text" value="29616"/>	No. of Violations <input type="text" value="2"/>
Docket No. <input type="text" value="2006-0455-IHW-E"/>	Order Type <input type="text" value="1660"/>
Media Program(s) <input type="text" value="Industrial and Hazardous Waste"/>	Enf. Coordinator <input type="text" value="Michael Meyer"/>
Multi-Media <input type="text"/>	EC's Team <input type="text" value="Enforcement Team 8"/>
Admin. Penalty \$ Limit Minimum <input type="text" value="\$0"/>	Maximum <input type="text" value="\$10,000"/>

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,100								
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	64% Enhancement	Subtotals 2, 3, & 7 <input type="text" value="\$6,464"/>								
Notes	The Respondent had two NOVs for similar violations, two NOVs for dissimilar violations, and three Agreed Orders received at this site within the past five years. The Respondent does receive a reduction for having an Emergency Management System in place for one year or more.									
Culpability	No <input type="text" value="0% Enhancement"/>	Subtotal 4 <input type="text" value="\$0"/>								
Notes	The Respondent does not meet the culpability criteria.									
Good Faith Effort to Comply	10% Reduction	Subtotal 5 <input type="text" value="-1,010"/>								
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%;"><small>Before NOV</small></th> <th style="width: 50%;"><small>NOV to EDPRP/Settlement Offer</small></th> </tr> <tr> <td>Extraordinary <input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td>Ordinary <input type="text"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> <tr> <td>N/A <input type="text"/></td> <td style="text-align: center;"><small>(mark with a small x)</small></td> </tr> </table>	<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>	Extraordinary <input type="text"/>	<input type="text"/>	Ordinary <input type="text"/>	<input checked="" type="checkbox"/>	N/A <input type="text"/>	<small>(mark with a small x)</small>	
<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>									
Extraordinary <input type="text"/>	<input type="text"/>									
Ordinary <input type="text"/>	<input checked="" type="checkbox"/>									
N/A <input type="text"/>	<small>(mark with a small x)</small>									
Notes	The Respondent achieved compliance on June 15, 2006									
Economic Benefit	0% Enhancement*	Subtotal 6 <input type="text" value="\$0"/>								
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"><small>Total EB Amounts</small> <input type="text" value="\$698"/></td> <td style="width: 50%;"><small>*Capped at the Total EB \$ Amount</small></td> </tr> <tr> <td><small>Approx. Cost of Compliance</small> <input type="text" value="\$16,000"/></td> <td></td> </tr> </table>	<small>Total EB Amounts</small> <input type="text" value="\$698"/>	<small>*Capped at the Total EB \$ Amount</small>	<small>Approx. Cost of Compliance</small> <input type="text" value="\$16,000"/>						
<small>Total EB Amounts</small> <input type="text" value="\$698"/>	<small>*Capped at the Total EB \$ Amount</small>									
<small>Approx. Cost of Compliance</small> <input type="text" value="\$16,000"/>										
SUM OF SUBTOTALS 1-7	Final Subtotal	\$15,554								
OTHER FACTORS AS JUSTICE MAY REQUIRE	<input type="text"/>	Adjustment <input type="text" value="\$0"/>								
<small>Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)</small>										
Notes	[Empty]									
	Final Penalty Amount	\$15,554								
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty <input type="text" value="\$15,554"/>								
DEFERRAL	<input type="text"/> Reduction	Adjustment <input type="text" value="\$0"/>								
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>										
Notes	No deferral is offered for non-expedited cases.									
PAYABLE PENALTY		\$15,554								

Screening Date 08-May-2006 Docket No. 2006-0455-IHW-E

PCW

Respondent Veolia ES Technical Solutions, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 29616

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102599719

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

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	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	3	60%
	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	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%
Other	Environmental management systems in place for one year or more	Yes	-10%
	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) 64%

>> 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 had two NOVs for similar violations, two NOVs for dissimilar violations, and three Agreed Orders received at this site within the past five years. The Respondent does receive a reduction for having an Emergency Management System in place for one year or more.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 64%

Screening Date 08-May-2006	Docket No. 2006-0455-IHW-E	PCW
Respondent Veolia ES Technical Solutions, L.L.C.	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 29616	<i>PCW Revision May 19, 2005</i>	
Reg. Ent. Reference No. RN102599719		
Media [Statute] Industrial and Hazardous Waste		
Enf. Coordinator Michael Meyer		
Violation Number <input type="text" value="1"/>		
Primary Rule Cite(s)	30 Tex. Admin. Code § 335.152(a)(1) and 40 Code of Federal Regulations § 264.13(b); Industrial and Hazardous Waste ("IHW") Permit No. 50212, Provision IV.A.	
Secondary Rule Cite(s)		
Violation Description	Failure to develop an adequate Waste Analysis Plan ("WAP"), as documented during an investigation conducted on February 13, 2006. Specifically, the Respondent's WAP did not include procedures to detect those materials in incoming wastes, which materials ended up, after incineration, in roll-off box no. 8213.	
Base Penalty		\$10,000
>> Environmental, Property and Human Health Matrix		
OR	Harm	
	Release	Major Moderate Minor
	Actual	
	Potential	
		Percent <input type="text"/>
>> Programmatic Matrix		
	Falsification	Major Moderate Minor
		x
		Percent <input type="text" value="1%"/>
Matrix Notes	At least 30% of the rule requirement was not met.	
Adjustment		-\$9,900
Base Penalty Subtotal		\$100
Violation Events		
Number of Violation Events		1
mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x
		Violation Base Penalty <input type="text" value="\$100"/>
One single event is recommended.		
Economic Benefit (EB) for this violation		Statutory Limit Test
Estimated EB Amount	\$51	Violation Final Penalty Total <input type="text" value="\$154"/>
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$154"/>

Economic Benefit Worksheet

Respondent Veolia ES Technical Solutions, L.L.C.
 Case ID No. 29616
 Reg. Ent. Reference No. RN102599719
 Media [Statute] Industrial and Hazardous 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
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	\$1,000	13-Feb-2006	21-Feb-2007	1.0	\$51	n/a	\$51
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to revise IHW Permit 50212 WAP to ensure that radioactivity above background levels is detected prior to shipping and receiving of waste, calculated from the investigation date to the projected 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 \$51

Screening Date 08-May-2006 **Docket No.** 2006-0455-IHW-E **PCW**
Respondent Veolia ES Technical Solutions, L.L.C. *Policy Revision 2 (September 2002)*
Case ID No. 29616 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102599719
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Michael Meyer
Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 335.2(a) and (b); 40 Code of Federal Regulations § 264.344(a), and IHW Permit No. 50212, Provision IV.B.3.b.
Secondary Rule Cite(s)

Violation Description
 Failure to ship industrial mixed waste (incinerator ash and radioactive waste) to an authorized facility for disposal and failure to prevent the acceptance of unauthorized waste that resulted in onsite waste management activities including storage and treatment, as documented during an investigation conducted on February 13, 2006. Specifically, the Respondent shipped roll-off box no. 8213 to Chemical Waste Management, Inc.'s landfill for disposal on April 1, 2005. This roll-off box was rejected and sent back to the Respondent because it contained industrial mixed waste (incinerator ash and radioactive waste) that had radioactive levels above background levels. The Respondent received the rejected roll-off box on April 6, 2005. The Respondent is not authorized to store and treat waste containing radioactive waste above background levels.

Base Penalty \$10,000

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual			X	Percent 25%
	Potential				

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
Matrix Notes						Percent
Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed protective levels.						

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 4

<i>mark only one use a small x</i>	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$10,000

Four quarterly events are recommended from the date the roll-off box was shipped for disposal by the Respondent (April 1, 2005) to the date the waste was shipped to an authorized facility (February 10, 2006).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$647

Violation Final Penalty Total \$15,400

This violation Final Assessed Penalty (adjusted for limits) \$15,400

Economic Benefit Worksheet

Respondent: Veolia ES Technical Solutions, L.L.C.
Case ID No.: 29616
Reg. Ent. Reference No.: RN102599719
Media [Statute]: Industrial and Hazardous 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
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	\$15,000	01-Apr-2005	10-Feb-2006	0.9	\$647	n/a	\$647
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 radioactive portion of the incinerator ash and to dispose of the waste at an authorized facility. Date required is the date the waste was initially shipped for disposal. Final date is the date the waste was shipped to an authorized facility.

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 **\$15,000**

TOTAL **\$647**

Compliance History

Customer/Respondent/Owner-Operator:	CN600130835 Onyx Environmental Services, L.L.C.	Classification: AVERAGE	Rating: 3.24
Regulated Entity:	RN102599719 ONYX ENVIRONMENTAL SERVICES LLC	Classification: AVERAGE	Site Rating: 5.58
ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	JE0024D
	AIR OPERATING PERMITS	PERMIT	1509
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD000838896
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	50212
	INDUSTRIAL AND HAZARDOUS WASTE DISPOSAL	PERMIT	50212
	INDUSTRIAL AND HAZARDOUS WASTE STORAGE	PERMIT	39012
	UNDERGROUND INJECTION CONTROL	PERMIT	WDW160
	UNDERGROUND INJECTION CONTROL	PERMIT	WDW358
	AIR NEW SOURCE PERMITS	PERMIT	12785
	AIR NEW SOURCE PERMITS	PERMIT	42450
	AIR NEW SOURCE PERMITS	PERMIT	44590
	AIR NEW SOURCE PERMITS	PERMIT	49820
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	JE0024D
	AIR NEW SOURCE PERMITS	PERMIT	51878
	AIR NEW SOURCE PERMITS	PERMIT	50998
	AIR NEW SOURCE PERMITS	PERMIT	73331
	AIR NEW SOURCE PERMITS	AFS NUM	0118
	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1230082
	WATER LICENSING	LICENSE	1230082
	IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION # (SWR)	50212
Location:	7665 HWY 73, PORT ARTHUR, TX, 77640	Rating Date: September 01 05	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	April 25, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 25, 2001 to April 25, 2006		

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

Name: Mike Limos Phone: 512.239.5839

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? Yes
3. If Yes, who is the current owner? Onyx Environmental Services, L.L.C.
4. If Yes, who was/were the prior owner(s)? Onyx Environmental Services, L.L.C.
5. When did the change(s) in ownership occur? Chemical Waste Management, Inc.
5. When did the change(s) in ownership occur? 01/29/2002

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 08/29/2003

ADMINORDER 2002-0630-MLM-E

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.4[G]
TWC Chapter 26 26.121

Rqmt Prov: VI.A.1. PERMIT

Description: Failure to prevent three unauthorized discharges of hydrocarbons at the parking lot near the heavy equipment building.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.9(a)(1)(G)

Rqmt Prov: VI.A.1. PERMIT

Description: Failure to document one satellite accumulation area of spent phosphoric acid (23%) at the

4 09/08/2004 (283802)
5 08/28/2003 (151514)
6 08/17/2004 (288580)
7 07/19/2005 (397345)
8 04/21/2006 (453560)
9 05/19/2004 (270468)
10 12/21/2005 (437069)
11 04/16/2004 (266020)
12 04/06/2005 (376393)
13 08/28/2003 (152893)
14 01/14/2005 (343612)
15 12/18/2003 (257655)
16 08/11/2005 (399866)
17 03/22/2005 (346934)
18 04/20/2004 (269201)
19 07/27/2005 (400457)
20 08/10/2005 (404180)
21 10/20/2004 (336088)
22 07/08/2004 (272300)
23 04/13/2006 (462592)
24 11/20/2003 (281073)
25 12/20/2005 (436654)
26 04/17/2006 (460956)
27 08/29/2005 (397031)
28 11/13/2003 (254550)
29 03/10/2006 (451540)
30 04/04/2006 (455622)
31 05/24/2005 (379321)
32 04/15/2004 (265978)
33 07/28/2005 (397902)
34 02/13/2004 (262514)
35 12/08/2003 (255353)
36 05/11/2004 (267462)
37 03/11/2005 (350190)
38 02/14/2006 (452571)
39 05/17/2002 (105848)
40 02/14/2002 (105847)
41 03/04/2005 (372799)
42 01/03/2002 (105846)
43 11/21/2001 (105845)
44 11/21/2001 (105844)
45 06/01/2001 (105843)
46 07/19/2004 (271957)
47 12/23/2004 (342977)
48 06/17/2005 (392465)

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

Date: 08/28/2003 (151514)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)

Description: Failure by Onyx Environmental to ensure the good working condition and general appearance of the system's facilities and equipment.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(I)

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
VEOLIA ES TECHNICAL
SOLUTIONS, L.L.C. FKA
ONYX ENVIRONMENTAL
SERVICES, L.L.C.;
RN102599719**

§
§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2006-0455-IHW-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 Veolia ES Technical Solutions, L.L.C. formerly known as Onyx Environmental Services, L.L.C. (“Veolia”) under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Veolia appear before the Commission and together stipulate that:

1. Veolia owns and operates a commercial hazardous waste treatment, storage and disposal facility which operates a hazardous waste incinerator located at 7665 State Highway 73, Port Arthur, Jefferson 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 and TCEQ rules.
3. The Commission and Veolia agree that the Commission has jurisdiction to enter this Agreed Order, and that Veolia is subject to the Commission's jurisdiction.
4. Veolia received notice of the violations alleged in Section II (“Allegations”) on or about April 26, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Veolia of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of fifteen thousand five hundred fifty-four dollars (\$15,554.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Veolia paid seven thousand seven hundred seventy-seven dollars (\$7,777.00) of the administrative penalty. Pursuant to TEX. WATER CODE § 7.067, seven thousand seven hundred seventy-seven dollars (\$7,777.00) of the administrative penalty shall be conditionally offset by Veolia's completion of a Supplemental Environmental Project (SEP) as defined in Attachment A, incorporated herein by reference. Veolia's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
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 Veolia agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Veolia implemented the following corrective measures at the Facility in response to this enforcement action:
 - a. Disposed of the radioactive waste to an authorized facility on February 10, 2006; and
 - b. Submitted a revised Waste Analysis Plan on June 15, 2006.
10. 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 Veolia has not complied with one or more of the terms or conditions in this Agreed Order.
11. 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.
12. 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

During an investigation conducted on February 13-22, 2006, a TCEQ Beaumont Regional Office investigator documented that Veolia violated:

1. 30 TEX. ADMIN. CODE § 335.152(a)(1); 40 C.F.R. § 264.13(b); and Industrial and Hazardous Waste ("IHW") Permit No. 50212, Provision IV.A. by failing to develop an adequate Waste Analysis Plan ("WAP"). Specifically, Veolia's WAP did not include procedures to detect those materials in incoming wastes, which materials ended up, after incineration, in roll-off box no. 8213.
2. 30 TEX. ADMIN. CODE § 335.2(a) and (b); 40 C.F.R. § 264.344(a); and IHW Permit No. 50212, Provision IV.B.3.b. by failing to ship industrial mixed waste (incinerator ash and radioactive waste) to an authorized facility for disposal and failing to prevent the acceptance of unauthorized waste that resulted in onsite waste management activities including storage and treatment. Specifically, Veolia shipped roll-off box no. 8213 to Chemical Waste Management, Inc.'s landfill for disposal on April 1, 2005. This roll-off box was rejected and sent back to Veolia because it contained industrial mixed waste (incinerator ash and radioactive waste) that had radioactive levels above background levels. Veolia received the rejected roll-off box on April 6, 2005. Veolia is not authorized to store and treat waste containing radioactive waste above background levels.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Veolia pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Veolia'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.
2. Veolia shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067 and as set forth in Section I, Paragraph 6, above. Seven thousand seven hundred seventy-seven dollars (\$7,777.00) of the assessed

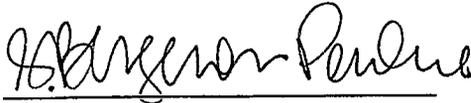
administrative penalty shall be offset with the condition that Veolia implement and complete the SEP pursuant to the terms of the SEP as defined in Attachment A, incorporated herein by reference. Veolia's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. The provisions of this Agreed Order shall apply to and be binding upon Veolia. Veolia 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 Veolia 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, Veolia's failure to comply is not a violation of this Agreed Order. Veolia shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Veolia shall notify the Executive Director within seven days after Veolia 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 Veolia shall be made in writing to the Executive Director. Extensions are not effective until Veolia 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 Veolia 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 Order to Veolia, or three days after the date on which the Commission mails notice of the Order to Veolia, 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

5/11/2009

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, 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 in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Veolia's compliance history;
- Greater scrutiny of any permit applications submitted by Veolia;
- 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 Veolia;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Veolia; and
- TCEQ seeking other relief as authorized by law.

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



Signature

4/30/09

Date

James M. Osborne

Name (Printed or typed)

General Manager

Title

Authorized representative of

Veolia ES Technical Solutions, L.L.C. fka Onyx Environmental Services, L.L.C.

Attachment A
Supplemental Environmental Project

Attachment A
Docket Number: 2006-0455-IHW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Veolia ES Technical Solutions, L.L.C. fka Onyx
Environmental Services, L.L.C.

Penalty Amount: Fifteen thousand five hundred fifty-four dollars (\$15,554)

SEP Offset Amount: Seven thousand seven hundred seven dollars (\$7,777)

Type of SEP: Pre-approved

Third-Party Recipient: **Southeast Texas Regional Planning Commission – West Port
Arthur Home Energy Efficiency Project**

Location of SEP: Jefferson County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **Southeast Texas Regional Planning Commission** for the *West Port Arthur Home Energy Efficiency Project* in Jefferson County as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, SEP funds will be used to conduct home energy audits and to assist low income residents in the West Port Arthur area by weatherizing their homes which will improve their homes' energy efficiency. SEP funds will be used to pay for the cost of caulking and insulating the homes and appliances as well as for replacing heating and cooling systems and major appliances with new energy efficient equipment. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

Implementation of this project will reduce residential fuel and electricity usage for heating and cooling. These reductions, in turn, will reduce emissions of particulate matter (PM), volatile organic compounds (VOC), and nitrogen oxides (NOx) associated with the combustion of fuel and generation of electricity.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

SETRPC
Attn: Bob Dickinson, Director, Transportation and Environmental Resources
South East Texas Regional Planning Commission
2210 Eastex Freeway
Beaumont, TX 77703

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.