

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-1356-MSW-E TCEQ ID: RN105530968 CASE NO.: 36414**  
**RESPONDENT NAME: RAUL PEREZ**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input 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><b>SITE WHERE VIOLATIONS OCCURRED:</b> Intersection of 19<sup>th</sup> Street and Henrietta Street, Kingsville, Kleberg County</p> <p><b>TYPE OF OPERATION:</b> Unauthorized landfill and trucking fuel station</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are two complaints. Both complainants alleged that the Respondent owned an illegal landfill operation. There is no record of additional pending enforcement actions regarding this facility.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 6, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Ms. Peipey Tang, Litigation Division, MC 175, (512) 239-0654  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Mr. Ross Fife, Waste Enforcement Section, MC 128, (512) 239-2541  <b>TCEQ Regional Contact:</b> Mr. Brad Genzer, Corpus Christi Regional Office, MC R-14, (361) 825-3106  <b>Respondent:</b> Raul Perez, 1404 E. Yoakum Street, Kingsville, Texas 78363  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                      April 25, 2008 and August 15, 2008</p> <p><b>Dates of Investigations Relating to this Case:</b>                      May 19, 2008 and June 6, 2008</p> <p><b>Date of NOE Relating to this Case:</b>                      July 10, 2008</p> <p><b>Background Facts:</b>                      The EDPRP was filed on November 21, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on November 26, 2008, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b>                      The Respondent is not yet in compliance. The Respondent owes \$31.61 in past-due fees and \$5,979.36 in past-due administrative penalties.</p> <p><b>MSW:</b></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 pay outstanding fees associated to aboveground storage tank ("AST") fees and the administrative penalty for Agreed Order Docket No. 2004-0712-MLM-E for TCEQ Account Nos. 61966A and 23601766 [30 TEX. ADMIN. CODE § 205.6; TEX. WATER CODE §§ 5.702 and 26.0291, and TCEQ Agreed Order Docket No. 2004-0712-MLM-E, Ordering Provision No. 1].</p>	<p><b>Total Assessed:</b> \$15,000</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$15,000</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake take the following technical requirements:</p> <p>1. Immediately, cease disposing any additional waste at the Site.</p> <p>2. Within 30 days,</p> <p>a. submit payment for all outstanding administrative fees and associated penalties; and</p> <p>b. remove all waste from the Site and dispose of it at an authorized facility.</p> <p>3. Within 45 days, submit written communication of compliance with Ordering Provisions Nos. 1 and 2.</p>

**Penalty Calculation Worksheet (PCW)**  
 Policy Revision 2 (September 2002) PCW Revision June 12, 2008

**TCEQ**  
**DATES** Assigned 14-Jul-2008  
 PCW 21-Aug-2008 Screening 19-Aug-2008 EPA Due

**RESPONDENT/FACILITY INFORMATION**  
 Respondent Raul Perez  
 Reg. Ent. Ref. No. RN105530968  
 Facility/Site Region 14-Corpus Christi Major/Minor Source Minor

**CASE INFORMATION**  
 Enf./Case ID No. 36414 No. of Violations 2  
 Docket No. 2008-1356-MSW-E Order Type Findings  
 Media Program(s) Municipal Solid Waste Government/Non-Profit No  
 Multi-Media Enf. Coordinator Ross Fife  
 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 \$15,000**

**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 The Respondent has no prior orders or NOVs at this site within the past 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 \$4,325  
 Approx. Cost of Compliance \$92,870  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7 Final Subtotal \$15,000**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0.0% **Adjustment \$0**  
 Reduces or enhances the Final Subtotal by the indicated percentage.

Notes **Final Penalty Amount \$15,000**

**STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$15,000**

**DEFERRAL** 0.0% Reduction **Adjustment \$0**  
 Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral is recommended for Findings Orders.

**PAYABLE PENALTY \$15,000**

**Screening Date** 19-Aug-2008

**Docket No.** 2008-1356-MSW-E

**PCW**

**Respondent** Raul Perez

Policy Revision 2 (September 2002)

**Case ID No.** 36414

PCW Revision June 12, 2008

**Reg. Ent. Reference No.** RN105530968

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Ross Fife

### 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%
<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)** 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**

The Respondent has no prior orders or NOVs at this site within the past five years.

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

<b>Screening Date</b> 19-Aug-2008	<b>Docket No.</b> 2008-1356-MSW-E	<b>PCW</b>	
<b>Respondent</b> Raul Perez	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 36414	<i>PCW Revision June 12, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN105530968			
<b>Media [Statute]</b> Municipal Solid Waste			
<b>Enf. Coordinator</b> Ross Fife			
<b>Violation Number</b> <input type="text" value="1"/>			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 330.15(c)		
<b>Violation Description</b>	Failed to prevent the unauthorized disposal of municipal solid waste, as documented during an investigation conducted on May 19, 2008. Specifically, the Respondent failed to prevent the disposal of approximately 23,616 cubic yards of municipal solid waste including brush, wood and plastic products, fencing material, demolition material and road base, and other waste at the site.		
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
<b>OR</b>	<b>Release</b>	<b>Harm</b>	
		Major      Moderate      Minor	
	Actual	<input type="text" value="x"/>	
	Potential	<input type="text"/>	<b>Percent</b> <input type="text" value="50%"/>
<b>&gt;&gt; Programmatic Matrix</b>			
	Falsification	Major      Moderate      Minor	
	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.		
<b>Adjustment</b>		<input type="text" value="\$5,000"/>	
		<input type="text" value="\$5,000"/>	
<b>Violation Events</b>			
	<b>Number of Violation Events</b>	<input type="text" value="3"/>	<b>Number of violation days</b>
		<input type="text" value="92"/>	
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$15,000"/>
	monthly	<input type="text" value="x"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
Three monthly events are recommended from the May 19, 2008 investigation date to the August 19, 2008 screening date.			
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>
		Before NOV      NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	<input type="text" value="x"/>	(mark with x)	
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.		
<b>Violation Subtotal</b>		<input type="text" value="\$15,000"/>	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>	<input type="text" value="\$4,325"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$15,000"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$15,000"/>	

## Economic Benefit Worksheet

**Respondent** Raul Perez  
**Case ID No.** 36414  
**Reg. Ent. Reference No.** RN105530968  
**Media** Municipal Solid Waste  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$92,870	19-May-2008	24-Apr-2009	0.93	\$4,325	n/a	\$4,325
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**  
 Estimated cost to dispose of the 23,616 cubic yards of waste located in an on-site pit at a permitted municipal solid waste landfill. The Date Required is the date of the investigation and the Final Date is the estimated date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

<b>Approx. Cost of Compliance</b>	\$92,870	<b>TOTAL</b>	\$4,325
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<b>Screening Date</b> 19-Aug-2008	<b>Docket No.</b> 2008-1356-MSW-E	<b>PCW</b>				
<b>Respondent:</b> Raul Perez	<i>Policy Revision 2 (September 2002)</i>					
<b>Case ID No.</b> 36414	<i>PCW Revision June 12, 2008</i>					
<b>Reg. Ent. Reference No.</b> RN105530968						
<b>Media [Statute]</b> Municipal Solid Waste						
<b>Enf. Coordinator</b> Ross Fife						
<b>Violation Number</b> <input type="text" value="2"/>						
<b>Rule Cite(s)</b>	<input type="text" value="Texas Water Code §§ 5.702 and 26.0291, and 30 Tex. Admin Code § 205.6"/>					
<b>Violation Description</b>	<input type="text" value="Failed to pay outstanding fees associated to aboveground storage tank (AST) fees and the administrative penalty for Agreed Order Docket No. 2004-0712-MLM-E for TCEQ Account Nos. 61966A and 23601766. Specifically, as of November 17, 2008, Mr. Perez owes \$31.65 in Account No. 61966A and \$5,812.16 in Account No. 23601766."/>					
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>				
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>						
OR	<b>Harm</b>			Percent	<input type="text" value="0%"/>	
	Release	Major	Moderate			Minor
	Actual	<input type="text"/>	<input type="text"/>			<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		
<b>&gt;&gt; Programmatic Matrix</b>						
	Falsification	Major	Moderate	Minor	Percent	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>	
Matrix Notes	<input type="text"/>					
<b>Adjustment</b>					<input type="text" value="\$10,000"/>	
					<input type="text" value="\$0"/>	
<b>Violation Events</b>						
Number of Violation Events <input type="text"/>		Number of violation days <input type="text"/>				
mark only one with an x	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$0"/>			
	monthly	<input type="text"/>				
	quarterly	<input type="text"/>				
	semiannual	<input type="text"/>				
	annual	<input type="text"/>				
	single event	<input type="text"/>				
No administrative penalty is recommended because penalties and interest will be assessed at the next billing.						
<b>Good Faith Efforts to Comply</b>						
		0.0% Reduction				
		Before NOV	NOV to EDP RP/Settlement Offer			
Extraordinary	<input type="text"/>	<input type="text"/>				
Ordinary	<input type="text"/>	<input type="text"/>				
N/A	X	(mark with x)				
Notes	<input type="text" value="N/A"/>					
<b>Violation Subtotal</b>					<input type="text" value="\$0"/>	
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>			
Estimated EB Amount <input type="text" value="\$0"/>		Violation Final Penalty Total		<input type="text" value="\$0"/>		
<b>This violation Final Assessed Penalty (adjusted for limits)</b>					<input type="text" value="\$0"/>	

## Economic Benefit Worksheet

**Respondent** Raul Perez  
**Case ID No.** 36414  
**Reg. Ent. Reference No.** RN105530968  
**Media** Municipal Solid Waste  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

N/A

**Avoided Costs**

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

**TOTAL**

\$0

# Compliance History

Customer/Respondent/Owner-Operator: CN602487852 PEREZ, RAUL Classification: AVERAGE Rating: 35.89  
Regulated Entity: RN105530968 PEREZ PROPERTY HENRIETTA Classification: AVERAGE BY Site Rating: 3.01  
DEFAULT

ID Number(s):

Location: J H PEREZ LOT 1 BLOCK 1 Rating Date: September 01 07 Repeat Violator: NO  
8.2 ACRES AT THE INTERSECTION OF 19TH STREET  
AND HENRIETTA ST

TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: August 19, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 19, 2003 to August 19, 2008

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

Name: Ross Fife Phone: 512-239-2541

## 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  
ENFORCEMENT ACTION  
CONCERNING  
RAUL PEREZ,  
RN105530968**

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§  
§  
§  
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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2008-1356-MSW-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 chs. 5, 7, and 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Raul Perez (“Mr. Perez”).

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

**FINDINGS OF FACT**

1. Mr. Perez owns and operates an unauthorized landfill located at the intersection of 19<sup>th</sup> Street and Henrietta Street, Kingsville, Kleberg County, Texas (the “Site”). Mr. Perez owns and operates a trucking fuel station at 107 East County Road 2155, Kingsville, Kleberg County, Texas (the “Fuel Station”).
2. The Site involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Fuel Station contains one above ground storage tank (“AST”). Mr. Perez’s AST is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Perez’s AST contains a regulated petroleum substance as defined in the rules of the Commission.
3. During investigations conducted on May 19, 2008, and June 6, 2008, TCEQ Corpus Christi investigators documented that Mr. Perez failed to prevent the unauthorized disposal of municipal solid waste. Specifically, Mr. Perez failed to prevent the disposal of approximately 23,616 cubic yards of municipal solid waste including brush, wood and plastic products, fencing material, demolition material, road base, and other waste at the Site.

4. During a records review conducted on August 19, 2008, TCEQ staff documented that Mr. Perez failed to pay outstanding fees associated to AST fees and the administrative penalty for Agreed Order Docket No. 2004-0712-MLM-E for TCEQ Account Nos. 61966A and 23601766.
5. Mr. Perez received notice of the violation in paragraph 3 on or about July 15, 2008.
6. 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 Raul Perez" (the "EDPRP") in the TCEQ Chief Clerk's office on November 21, 2008.
7. By letter dated on November 21, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Perez with notice of the EDPRP. According to the return receipt "green card," Mr. Perez received notice of the EDPRP on November 26, 2008, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Mr. Perez received notice of the EDPRP, provided by the Executive Director. Mr. Perez 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, Mr. Perez is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs 5, 7, and 26, TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Perez 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. 4, Mr. Perez failed to pay outstanding fees associated to AST fees and the administrative penalty for Agreed Order Docket No. 2004-0712-MLM-E for TCEQ Account Nos. 61966A and 23601766, in violation of 30 TEX. ADMIN. CODE § 205.6; TEX. WATER CODE §§ 5.702 and 26.0291; and TCEQ Agreed Order Docket No. 2004-0712-MLM-E, Ordering Provision No. 1.
4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Perez with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

5. As evidenced by Finding of Fact No. 8, Mr. Perez failed to file a timely answer to the EDRP, 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 Mr. Perez 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 Mr. Perez 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 fifteen thousand dollars (\$15,000.00) 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. Mr. Perez is assessed an administrative penalty in the amount of fifteen thousand dollars (\$15,000.00) for violations of TEX. WATER CODE chs. 5 and 26, TEX. HEALTH & SAFETY CODE ch. 361, and rules of the TCEQ. The payment of this administrative penalty and Mr. Perez'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: Raul Perez; Docket No. 2008-1356-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. Mr. Perez shall undertake the following technical requirements:
- a. Immediately upon the effective date of this Order, Mr. Perez shall cease disposing any additional waste at the Site;
  - b. Within 30 days after the effective date of this Order, Mr. Perez shall:
    - i. submit payment for all outstanding Administrative Fees and Associated Penalties, include with the notation, "Raul Perez – TCEQ Account Nos. 61966A and 23601766," 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
    - and;
    - ii. remove all waste from the Site and dispose of it at an authorized facility;
  - c. Within 45 days after the effective date of this Order, Mr. Perez shall submit written communication of compliance with Ordering Provisions Nos. 2.a. through 2.b.ii. as described below:

The certification shall, include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, 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, TX 78711-3087

with a copy to:

Brad Genzer, Waste Section Manager  
Corpus Christi Regional Office  
Texas Commission on Environmental Quality  
NRC Bldg., Ste. 1200  
6300 Ocean Dr., Unit 5839  
Corpus Christi, TX 78412-5839

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Perez. Mr. Perez is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site and Fuel Station operations referenced in this Order.
5. If Mr. Perez fails 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, Mr. Perez's failure to comply is not a violation of this Order. Mr. Perez shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Perez shall notify the Executive Director within seven days after Mr. Perez becomes 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 Mr. Perez shall be made in writing to the Executive Director. Extensions are not effective until Mr. Perez receives 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 Mr. Perez if the Executive Director determines that Mr. Perez has 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

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For the Commission

**AFFIDAVIT OF PEIPEY TANG**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Peipey Tang. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I 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 Raul Perez” (the “EDPRP”) with the Office of the Chief Clerk on November 21, 2008.

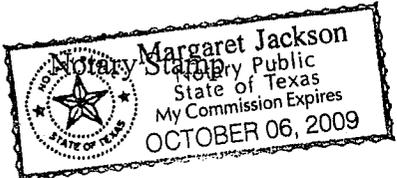
I sent the EDPRP to Mr. Perez at his last known address on November 21, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Perez received notice of the EDPRP on November 26, 2008, as evidenced by the signature on the card.

More than 20 days have elapsed since Mr. Perez received notice of the EDPRP. Mr. Perez failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

Peipey Tang  
Peipey Tang  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Peipey Tang, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 6 day of February, A.D., 2009.



Margaret Jackson  
Notary Signature