

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-0537-MSW-E TCEQ ID: RN104436357 CASE NO.: 35634**  
**RESPONDENT NAME: SILVESTER AND MARTHA MARTINEZ**

<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 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 10123 Deer Creek Road, Carlsbad, Tom Green County</p> <p><b>TYPE OF OPERATION:</b> Unauthorized municipal solid waste disposal facility</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired April 6, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Ms. Danielle Porras, Waste Enforcement Section, MC 128, (512) 239-2602  <b>TCEQ Regional Contact:</b> Mr. Mark Newman, San Angelo Regional Office, MC R-08, (325) 655-9479  <b>Respondent:</b> Mr. Silvester Martinez and Ms. Martha Martinez, P.O. Box 598, Carlsbad, Texas 76934  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

CHIEF CLERKS OFFICE  
 2009 MAY -5 AM 11: 56  
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> March 3, 2008</p> <p><b>Date of NOE Relating to this Case:</b> March 5, 2008</p> <p><b>Background Facts:</b> The EDPRP was filed September 26, 2008, and mailed to the Respondents via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondents received notice of the EDPRP on October 3, 2008. The Respondents failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b></p> <p><b>MSW:</b> Failed to prevent the disposal of municipal solid waste at an unauthorized solid waste facility [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p><b>Total Assessed:</b> \$1,050</p> <p><b>Total Deferred:</b> \$0  <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> \$1,050</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 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 Respondents shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately, cease allowing any additional disposal of municipal solid waste at the Facility.</li> <li>2. Within 30 days, ensure that all unauthorized waste at the Facility is removed and properly disposed of at an authorized facility.</li> <li>3. Within 45 days, submit written certification demonstrating compliance with Ordering Provisions Nos. 1 and 2.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	10-Mar-2008	<b>Screening</b>	17-Mar-2008	<b>EPA Due</b>	
	<b>PCW</b>	23-Jul-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Silvester and Martha Martinez
<b>Reg. Ent. Ref. No.</b>	RN104436357
<b>Facility/Site Region</b>	8-San Angelo
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	35634	<b>No. of Violations</b>	1
<b>Docket No.</b>	2008-0537-MSW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Enf. Coordinator</b>	Cynthia McKaughan
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History**  **Subtotals 2, 3, & 7**

**Notes**

**Culpability**   **Subtotal 4**

**Notes**

**Good Faith Effort to Comply**  **Subtotal 5**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

**Notes**

**Total EB Amounts**  **Subtotal 6**   
**Approx. Cost of Compliance**  *\*Capped at the Total EB \$ Amount*

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  **Adjustment**

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

**Notes**

**PAYABLE PENALTY**

**Screening Date** 17-Mar-2008

**Docket No.** 2008-0537-MSW-E

**PCW**

**Respondent** Silvester and Martha Martinez

Policy Revision 2 (September 2002)

**Case ID No.** 35634

PCW Revision February 29, 2008

**Reg. Ent. Reference No.** RN104436357

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Cynthia McKaughan

### 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 <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 <i>(number of judgements or consent decrees meeting criteria)</i>	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 <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	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 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	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)**

>> **Repeat Violator (Subtotal 3)**

**Adjustment Percentage (Subtotal 3)**

>> **Compliance History Person Classification (Subtotal 7)**

**Adjustment Percentage (Subtotal 7)**

>> **Compliance History Summary**

**Compliance History Notes**

The Respondent had one NOV with same or similar violations, during the previous five years.

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

Screening Date 17-Mar-2008

Docket No. 2008-0537-MSW-E

PCW

Respondent Silvester and Martha Martinez

Policy Revision 2 (September 2002)

Case ID No. 35634

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN104436357

Media [Statute] Municipal Solid Waste

Enf. Coordinator Cynthia McKaughan

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 330.15(c)

Violation Description

Failed to prevent the disposal of municipal solid waste at an unauthorized facility, as documented during an investigation conducted on March 3, 2008. Specifically, approximately 15 cubic yards of shingles and other solid waste were noted including piles of shingles in and above the draws, pieces of shingles in the creek bed, shingles in the driveway and apparent burn barrel waste near the northwestern edge of the southernmost pile of shingles.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual				x	10%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 25

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

Violation Base Penalty \$1,000

One quarterly event is recommended from the investigation date, March 3, 2008 to the screening date, March 17, 2008.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$13

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

## Economic Benefit Worksheet

**Respondent** Silvester and Martha Martinez

**Case ID No.** 35634

**Reg. Ent. Reference No.** RN104436357

**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
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	\$417	3-Mar-2008	15-Oct-2008	0.6	\$13	n/a	\$13
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of 15 cubic yards of MSW (\$27 plus \$0.80 loading fee per cubic yard) at an authorized facility. Date Required is the investigation date and Final Date is the estimated date of compliance.

**Avoided Costs**

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

Disposal				0.0	\$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

\$417

**TOTAL**

\$13

## Compliance History

Customer/Respondent/Owner-Operator:	CN602729790	Silvester and Martha Martinez	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN104436357	SILVESTER AND MARTHA MARTINEZ DISPOSAL SITE	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):				
Location:	10123 DEER CREEK ROAD, CARLSBAD, TX, 76934		Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 08 - SAN ANGELO			
Date Compliance History Prepared:	April 01, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 01, 2003 to April 01, 2008			

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

Name: Cynthia McKaughan Phone: (512) 239-0735

### 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)?  | <u>N/A</u> |
| 5. When did the change(s) in ownership occur?  | <u>N/A</u> |

### 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 | 03/25/2005 | (373847) |
| 2 | 01/03/2008 | (611969) |
| 3 | 03/05/2008 | (638058) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |  |          |                          |
|--------------|--|----------|--------------------------|
| Date:        | 12/09/2004   | (343749) |                          |
| Self Report? | NO   |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 330, SubChapter A 330.15(c)<br>30 TAC Chapter 330, SubChapter A 330.5(c)  |          |                          |
| Description: | Unauthorized disposal or burning of nonhazardous municipal solid waste where the only economic gain is avoiding the cost of disposing at a landfill (i.e. nuisance dumping). Current citation: §330.15(c). |          |                          |
- 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  
SILVESTER AND MARTHA  
MARTINEZ,  
RN104436357**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2008-0537-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 ch. 7 and 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 Silvester and Martha Martinez (“Mr. and Mrs. Martinez”).

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

### **FINDINGS OF FACT**

1. Mr. and Mrs. Martinez own real property located at 10123 Deer Creek Road, Carlsbad, Tom Green County, Texas (the “Facility”).
2. The Facility involves the management and/or disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection on March 3, 2008, a TCEQ San Angelo Regional Office investigator documented that Mr. and Mrs. Martinez failed to prevent the disposal of municipal solid waste at an unauthorized solid waste facility.
4. Mr. and Mrs. Martinez received notice of the violation on or about March 10, 2008.
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 Silvester and Martha Martinez” (the “EDPRP”) in the TCEQ Chief Clerk’s office on September 26, 2008.

6. By letter dated September 26, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. and Mrs. Martinez with notice of the EDPRP. According to the return receipt "green card", Mr. and Mrs. Martinez received notice of the EDPRP on October 3, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. and Mrs. Martinez received notice of the EDPRP provided by the Executive Director. Mr. and Mrs. Martinez 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. and Mrs. Martinez are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3., Mr. and Mrs. Martinez failed to prevent the disposal of municipal solid waste at an unauthorized solid waste facility, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. and Mrs. Martinez with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. and Mrs. Martinez 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 Mr. and Mrs. Martinez and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. and Mrs. Martinez 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.
6. An administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

7. 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. and Mrs. Martinez are assessed an administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. and Mrs. Martinez'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: Silvester and Martha Martinez; Docket No. 2008-0537-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. and Mrs. Martinez shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Mr. and Mrs. Martinez shall cease allowing any additional disposal of municipal solid waste at the Facility.
  - b. Within 30 days after the effective date of this Order, Mr. and Mrs. Martinez shall ensure that all unauthorized waste at the Facility is removed and properly disposed of at an authorized facility.
  - c. Within 45 days after the effective date of this Order, Mr. and Mrs. Martinez shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

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

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

with a copy to:

Mark Newman, Waste Section Manager  
Texas Commission on Environmental Quality  
San Angelo Regional Office  
622 South Oakes, Suite K  
San Angelo, Texas 76903-7035

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. and Mrs. Martinez. Mr. and Mrs. Martinez are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. and Mrs. Martinez 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, Mr. and Mrs. Martinez's failure to comply is not a violation of this Order. Mr. and Mrs. Martinez shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. and Mrs. Martinez shall notify the Executive Director within seven days after Mr. and Mrs. Martinez 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 Mr. and Mrs. Martinez shall be made in writing to the Executive Director. Extensions are not effective until Mr. and Mrs. Martinez 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 Mr. and Mrs. Martinez if the Executive Director determines that Mr. and Mrs. Martinez 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.

Silvester and Martha Martinez  
Docket No. 2008-0537-MSW-E  
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**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF XAVIER GUERRA**

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

“My name is Xavier Guerra. 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 Silvester and Martha Martinez” (the “EDPRP”) was filed with the Office of the Chief Clerk on September 26, 2008.

I sent the EDPRP to Mr. and Mrs. Martinez at their last known address on September 26, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. and Mrs. Martinez received notice of the EDPRP on October 3, 2008, as evidenced by the signature on the card.

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

  
\_\_\_\_\_  
Xavier Guerra  
Attorney  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 3rd day of February, A.D., 2009.

Notary Seal: STACY TANNER, Notary Public, State of Texas, My Commission Expires NOVEMBER 16, 2009, Notary without Bond

  
\_\_\_\_\_  
Notary Signature