

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1830-MLM-E TCEQ ID: RN105078810 CASE NO.: 34941
RESPONDENT NAME: JOEL GARZA

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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

SITE WHERE VIOLATION(S) OCCURRED: 17900 Citrus Drive, Edinburg, Hildago County

TYPE OF OPERATION: Unauthorized municipal solid waste disposal site

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. 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 1, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-0205
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Mr. John Shelton, Waste Enforcement Section, MC 128, (512) 239-2563
TCEQ Regional Contact: Mr. Jaime Garza, Harlingen Regional Office, MC R-15, (956) 425-6010
Respondent: Mr. Joel Garza, 17900 Citrus Drive, Edinburg, Texas 78541
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 22, 2007</p> <p>Date of NOE Relating to this Case: November 16, 2007</p> <p>Background Facts: The EDPRP was filed June 13, 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 June 16, 2008. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in Compliance.</p> <p>MLM:</p> <p>1. Failed to comply with the general prohibition on outdoor burning by burning approximately 10 cubic yards of municipal solid waste, including treated wood, sheetrock, foam insulation, five gallon buckets, wiring, paper, roofing shingles, and cardboard [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2. Failed to prevent the unauthorized disposal of municipal solid waste by allowing 20 cubic yards of municipal solid waste, including treated wood, sheetrock, foam insulation, five gallon buckets, wiring, paper, roofing shingles, and cardboard, to be disposed of at the Site [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p>Initial Calculated Penalty: \$2,370</p> <p>Total Assessed: \$2,370</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$2,370</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>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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s):</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Immediately:</p> <p>a. Cease all unauthorized burning at the Site; and</p> <p>b. Cease accepting and disposing of any additional waste at the Site.</p> <p>2. Within 30 days, remove all municipal solid waste and dispose of the waste at an authorized facility, and</p> <p>3. Within 45 days, submit written certification demonstrating compliance with the above Ordering Provisions.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision November 6, 2007

DATES	Assigned	5-Nov-2007	Screening	8-Nov-2007	EPA Due
	PCW	8-Nov-2007			

RESPONDENT/FACILITY INFORMATION	
Respondent	Joel Garza
Reg. Ent. Ref. No.	RN105078810
Facility/Site Region	15-Harlingen
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34941	No. of Violations	2
Docket No.	2007-1830-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	John Shelton
Multi-Media	Air	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* **\$2,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5% Enhancement *Subtotals 2, 3, & 7* **\$100**

Notes: The Respondent received one NOV with same or similar violations.

Culpability No 0% Enhancement *Subtotal 4* **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction *Subtotal 5* **\$0**

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

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

0% Enhancement* *Subtotal 6* **\$0**

Total EB Amounts	\$254	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$810	

SUM OF SUBTOTALS 1-7 *Final Subtotal* **\$2,100**

OTHER FACTORS AS JUSTICE MAY REQUIRE 13% *Adjustment* **\$270**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended adjustment to capture the avoided cost associated with the violation.

Final Penalty Amount **\$2,370**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **\$2,370**

DEFERRAL 0% Reduction *Adjustment* **\$0**

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

Notes: Deferral not offered.

PAYABLE PENALTY **\$2,370**

Screening Date 8-Nov-2007

Docket No. 2007-1830-MLM-E

PCW

Respondent Joel Garza

Policy Revision 2 (September 2002)

Case ID No. 34941

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN105078810

Media [Statute] Municipal Solid Waste

Enf. Coordinator John Shelton

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)	1	5%
	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 judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> 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 received one NOV with same or similar violations.

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

Screening Date 8-Nov-2007	Docket No. 2007-1830-MLM-E	PCW
Respondent Joel Garza	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34941	<i>PCW Revision November 6, 2007</i>	
Reg. Ent. Reference No. RN105078810		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator John Shelton		
Violation Number	1	
Rule Cite(s)	30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)	
Violation Description	Failed to comply with the general prohibition on outdoor burning, as documented during an investigation conducted on October 22, 2007. Specifically, the Respondent burned approximately 10 cubic yards of municipal solid waste, including treated wood, sheetrock, foam insulation, five gallon buckets, wiring, paper, roofing shingles, and cardboard, at the time of the investigation.	
Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="10%"/>
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="0%"/>
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation.				
Adjustment <input type="text" value="\$9,000"/>					

\$10,000 - \$9,000 = \$1,000

Violation Events																
	Number of Violation Events	<input type="text" value="1"/>	Number of violation days	<input type="text" value="19"/>												
<i>mark only one with an x</i>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>monthly</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>quarterly</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>semiannual</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>annual</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>single event</td><td style="text-align: center;"><input checked="" type="checkbox"/></td></tr> </table>	daily	<input type="checkbox"/>	monthly	<input type="checkbox"/>	quarterly	<input type="checkbox"/>	semiannual	<input type="checkbox"/>	annual	<input type="checkbox"/>	single event	<input checked="" type="checkbox"/>	Violation Base Penalty <input type="text" value="\$1,000"/>		
daily	<input type="checkbox"/>															
monthly	<input type="checkbox"/>															
quarterly	<input type="checkbox"/>															
semiannual	<input type="checkbox"/>															
annual	<input type="checkbox"/>															
single event	<input checked="" type="checkbox"/>															
One single event is recommended based on the October 22, 2007 investigation date.																

Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	<input type="text" value="\$232"/>	Violation Final Penalty Total	<input type="text" value="\$1,185"/>
This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$1,185"/>

Economic Benefit Worksheet

Respondent Joel Garza
 Case ID No. 34941
 Reg. Ent. Reference No. RN105078810
 Media Municipal Solid Waste
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal	\$270	22-Oct-2007	16-Aug-2008	0.8	\$11	\$221	\$232
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to properly dispose of approximately 10 cubic yards of waste that was disposed of by burning (\$27.00 per cubic yard). The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Approx. Cost of Compliance

\$270

TOTAL

\$232

Screening Date 8-Nov-2007 **Docket No.** 2007-1830-MLM-E **PCW**
Respondent Joel Garza *Policy Revision 2 (September 2002)*
Case ID No. 34941 *PCW Revision November 6, 2007*
Reg. Ent. Reference No. RN105078810
Media [Statute] Municipal Solid Waste
Enf. Coordinator John Shelton
Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 330.15(c)
Violation Description Failed to prevent the unauthorized disposal of municipal solid waste, as documented during an investigation conducted on October 22, 2007. Specifically, the Respondent allowed approximately 20 cubic yards of municipal solid waste, including treated wood, sheetrock, foam insulation, five gallon buckets, wiring, paper, roofing shingles, and cardboard, to be disposed of on his property.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual		x	
Potential			10%	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes: Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events: 1 19 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended based on the October 22, 2007 inspection date and the November 8, 2007 screening date.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$22 Violation Final Penalty Total \$1,185

This violation Final Assessed Penalty (adjusted for limits) \$1,185

Economic Benefit Worksheet

Respondent Joel Garza
Case ID No. 34941
Reg. Ent. Reference No. RN105078810
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

Item Description: 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	\$540	22-Oct-2007	16-Aug-2008	0.8	\$22	n/a	\$22
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 20 cubic yards of municipal solid waste and dispose of it at an approved municipal solid waste disposal site (\$27.00 per cubic yard). Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$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	\$540	TOTAL	\$22
----------------------------	-------	-------	------

Compliance History

Customer/Respondent/Owner-Operator: CN603106071 GARZA, JOEL Classification: AVERAGE Rating: 6.00
 Regulated Entity: RN105078810 PROPERTY LOCATED AT 17900 CITRUS DR IN EDINBURG TX Classification: AVERAGE Site Rating: 6.00
 ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 455150148
 Location: 17900 CITRUS DR, EDINBURG, TX, 78541 Rating Date: September 01 07 Repeat Violator: NO
 TCEQ Region: REGION 15 - HARLINGEN
 Date Compliance History Prepared: November 07, 2007
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: November 07, 2002 to November 07, 2007
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: John Shelton Phone: (512) 239-2563

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.)
 Date: 11/01/2006 (517746)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 111, SubChapter B 111.201
 Description: Failure to not cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this Sub Chapter or by orders or permits of the commission.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 330, SubChapter A 330.15
 Description: Failure of a person to not permit the disposal of municipal solid waste.
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JOEL GARZA;
RN105078810

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2007-1830-MLM-E

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

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

FINDINGS OF FACT

1. Mr. Garza owns and operates an unauthorized municipal solid waste disposal site at 17900 Citrus Drive, Edinburg, Hildago County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12) and involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection conducted on October 22, 2007, a TCEQ Harlingen Regional Office investigator documented that Mr. Garza violated the following requirements:
 - a. Failed to comply with the general prohibition on outdoor burning by burning approximately 10 cubic yards of municipal solid waste, including treated wood, sheetrock, foam insulation, five gallon buckets, wiring, paper, roofing shingles, and cardboard, at the Site; and
 - b. Failed to prevent the unauthorized disposal of municipal solid waste by allowing 20 cubic yards of municipal solid waste, including treated wood, sheetrock, foam

insulation, five gallon buckets, wiring, paper, roofing shingles, and cardboard, to be disposed of at the Site.

4. Mr. Garza received notice of the violations on or about November 21, 2007.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Joel Garza" (the "EDPRP") in the TCEQ Chief Clerk's office on June 13, 2008.
6. By letter dated June 13, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Garza with notice of the EDPRP. According to the return receipt "green card," Mr. Garza received notice of the EDPRP on June 16, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Garza received notice of the EDPRP, provided by the Executive Director. Mr. Garza 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. Garza is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7, and TEX. HEALTH & SAFETY CODE chs. 361 and 382 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Garza failed to comply with the general prohibition on outdoor burning by burning approximately 10 cubic yards of municipal solid waste, including treated wood, sheetrock, foam insulation, five gallon buckets, wiring, paper, roofing shingles, and cardboard, at the Site, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 3.b., Mr. Garza failed to prevent the unauthorized disposal of municipal solid waste by allowing 20 cubic yards of municipal solid waste, including treated wood, sheetrock, foam insulation, five gallon buckets, wiring, paper, roofing shingles, and cardboard, to be disposed of at the Site, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Garza with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a)(2).

5. As evidenced by Finding of Fact No. 7, Mr. Garza 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. Garza 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. Garza 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 two thousand three hundred seventy dollars (\$2,370.00) 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. Garza is assessed an administrative penalty in the amount of two thousand three hundred seventy dollars (\$2,370.00) for violations of TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Garza'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: Joel Garza; Docket No. 2007-1830-MLM-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Garza shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Garza shall cease all unauthorized burning at the Site;
 - b. Immediately upon the effective date of this Order, Mr. Garza shall cease accepting and disposing of any additional waste at the Site;
 - c. Within 30 days after the effective date of this Order, Mr. Garza shall remove all municipal solid waste and dispose of the wastes at an authorized facility; and
 - d. Within 45 days after the effective date of this Order, Mr. Garza shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a., 2.b., and 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Mr. Garza shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a., 2.b., and 2.c. 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:

David Ramirez
Regional Director
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Ave.
Harlingen, Texas 78550-5247

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

Joel Garza
Docket No. 2007-1830-MLM-E
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF RUDY CALDERON

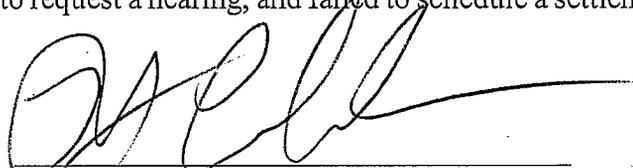
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Rudy Calderon. 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, 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 Joel Garza” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 13, 2008.

The EDPRP was mailed to Mr. Garza at his last known address on June 13, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Garza received notice of the EDPRP on June 16, 2008, as evidenced by the signature on the card.

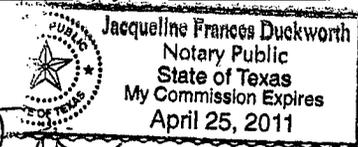
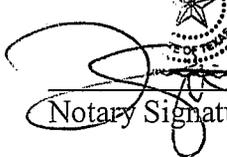
More than 20 days have elapsed since Mr. Garza received notice of the EDPRP. Mr. Garza failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Rudy Calderon, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, 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 27th day of March, A.D., 2009.



Notary Signature