

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2008-1511-MSW-E **TCEQ ID:** RN102994753 **CASE NO.:** 36534
RESPONDENT NAME: City of Marshall and Allied Waste Systems, Inc.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Marshall Convenience Station, 2300 Five Notch Road, Marshall, Harrison County</p> <p>TYPE OF OPERATION: Citizen's convenience Station</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on July 18, 2008, alleging that waste was being improperly deposited on the ground at the Site. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 15, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p>TCEQ Attorney/SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732</p> <p>TCEQ Enforcement Coordinator: Mr. Clinton Sims, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-6933; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387</p> <p>Respondent: Mr. Chris Alderete, Environmental Manager, Allied Waste Systems, Inc., P.O. Box 130702, Tyler, Texas 75713</p> <p>Mr. J. Roy Walters, General Manager, Allied Waste Systems, Inc., P.O. Box 130702, Tyler, Texas 75713</p> <p>Mr. Frank Johnson, City Manager, City of Marshall, P.O. Box 698, Marshall, Texas 75671</p> <p>Mr. Brian Breeding, Public Works Director, City of Marshall, P.O. Box 698, Marshall, Texas 75671</p> <p>Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: July 18, 2008</p> <p>Date of Investigation Relating to this Case: July 21, 2008</p> <p>Date of NOV/NOE Relating to this Case: August 22, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WASTE</p> <p>1) Failure to obtain a scrap tire storage site registration prior to storing more than 500 scrap tires on the ground. Specifically, approximately 550 scrap tires were observed on the ground on the north side of the Facility [30 TEX. ADMIN. CODE § 328.60(a)].</p> <p>2) Failure to prevent the discharge of municipal solid waste into or adjacent to water of the state and to prohibit the unloading and depositing of municipal solid waste in an unauthorized area of a municipal solid waste facility. Specifically, approximately 1,200 cubic yards of solid waste (including lumber, old mattresses, old furniture, an old hot water heater, old washing machines, wooden pallets, trash in plastic bags, cardboard boxes, plastic buckets, various types of scrap metal, and construction debris) was observed piled on the ground behind and adjacent to the primary waste off-loading dock. In addition, a black, oily substance from an overturned 55-gallon plastic drum was observed discharged on to the ground between the Facility's primary off-loading dock and Parker Creek [30 TEX. ADMIN. CODE §§ 330.15 and 330.225(b) and TEX. WATER CODE § 26.121].</p> <p>3) Failure to properly control windblown material and litter throughout the Facility. Specifically, the Respondents allowed</p>	<p>Total Assessed: \$5,400</p> <p>Total Deferred: \$1,080 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$2,160</p> <p>Total Paid to General Revenue: \$2,160</p> <p>CN600713481: 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>CN600337612: Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondents have implemented the following corrective measures at the Facility:</p> <p>a) The TCEQ Tyler Regional Office received documentation showing that 667 passenger tires, two truck tires, and one tractor tire had been removed on August 5, 2008 and August 8, 2008 and properly manifested for disposal.</p> <p>b) The TCEQ Tyler Regional Office received photographs verifying that all waste that was on the ground had been picked up and placed in roll-off containers, and sent to the Allied Waste Pinehill Landfill for disposal on July 29, 2008 and July 30, 2008. In addition, the black, oily substance from an overturned 55-gallon plastic drum that was discharged on to the ground between the Facility's primary off-loading dock and Parker Creek had been properly removed and disposed.</p> <p>c) The TCEQ Tyler Regional Office received photographs indicating that the area behind the primary waste off-loading dock where the ponded stagnant water was previously observed had been graded and is no longer capable of creating a nuisance condition on July 30, 2008.</p> <p>d) A TCEQ Tyler Regional Office investigator visited the Facility on September 30, 2008, and observed that windblown material and litter is properly controlled throughout the Facility.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A).</p>

<p>spilled and windblown trash to accumulate along the entrance access road between Five Notch Road and the Facility's primary waste off-loading dock [30 TEX. ADMIN. CODE § 330.233(a)(2)].</p> <p>4) Failure to take appropriate measures to control ponded water at a municipal solid waste facility to avoid creating an odor nuisance. Specifically, stagnant water with significant objectionable odors was observed ponding on the ground between the Facility's primary waste off-loading dock and Parker Creek [30 TEX. ADMIN. CODE § 330.245(k)].</p>		
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Additional ID No(s): MSW non-permitted

Attachment A
Docket Number: 2008-1511-MSW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondents: City of Marshall and Allied Waste Systems, Inc.
Payable Penalty Amount: Four Thousand Three Hundred Twenty Dollars (\$4,320)
SEP Amount: Two Thousand One Hundred Sixty Dollars (\$2,160)
Type of SEP: Pre-approved
Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Unauthorized Trash Dump Clean-Up
Location of SEP: Harrison County

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

1. Project Description

A. Project

The Respondents shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondents certify that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

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

2. Performance Schedule

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

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

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

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

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

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondents shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	25-Aug-2008			
	PCW	17-Sep-2008	Screening	16-Sep-2008	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Marshall and Allied Waste Systems, Inc.
Reg. Ent. Ref. No.	RN102994753
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36534	No. of Violations	3
Docket No.	2008-1511-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Clinton Sims
		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	\$4,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No change due to average performer classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$975
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$15	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$8,970	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,525
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$3,525
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,525
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DEFERRAL	20.0%	Reduction	Adjustment	-\$705
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,820
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Screening Date 16-Sep-2008	Docket No. 2008-1511-MSW-E	PCW
Respondent City of Marshall and Allied Waste Systems, Inc.	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 36534	<i>PCW Revision June 12, 2008</i>	
Reg. Ent. Reference No. RN102994753		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Clinton Sims		

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	0	0%
	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) 0%

>> Repeat Violator (Subtotal 3)

No			Adjustment Percentage (Subtotal 3) 0%
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>> Compliance History Person Classification (Subtotal 7)

Average Performer			Adjustment Percentage (Subtotal 7) 0%
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>> Compliance History Summary

Compliance History Notes	No change due to average performer classification.
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Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 16-Sep-2008	Docket No. 2008-1511-MSW-E	PCW	
Respondent City of Marshall and Allied Waste Systems, Inc.	<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 36534	<i>PCW Revision June 12, 2008</i>		
Reg. Ent. Reference No. RN102994753			
Media [Statute] Municipal Solid Waste			
Enf. Coordinator Clinton Sims			
Violation Number <input type="text" value="1"/>			
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code §§ 330.15 and 330.225(b) and Tex. Water Code § 26.121"/>		
Violation Description	<input type="text" value="Failed to prevent the discharge of municipal solid waste into or adjacent to water of the state and to prohibit the unloading and depositing of municipal solid waste in an unauthorized area of a municipal solid waste facility, as documented during an investigation conducted on July 21, 2008. Specifically, approximately 1,200 cubic yards of solid waste (including lumber, old mattresses, old furniture, an old hot water heater, old washing machines, wooden pallets, trash in plastic bags, cardboard boxes, plastic buckets, various types of scrap metal, and construction debris) was observed piled on the ground behind and adjacent to the primary waste off-loading dock. In addition, a black, oily substance from an overturned 55-gallon plastic drum was observed discharged on to the ground between the Facility's primary off-loading dock and Parker Creek."/>		
Base Penalty	<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix			
OR	Release	Harm	
		Major Moderate Minor	
	Actual	<input type="text" value="x"/>	
	Potential	<input type="text"/>	Percent <input type="text" value="25%"/>
>> Programmatic Matrix			
	Falsification	Major Moderate Minor	
	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
Matrix Notes	<input type="text" value="Human health or the environment has been exposed to significant amounts of pollutants which do not exceed protective levels."/>		
Adjustment	<input type="text" value="\$7,500"/>		
			<input type="text" value="\$2,500"/>
Violation Events			
	Number of Violation Events	<input type="text" value="1"/>	Number of violation days
		<input type="text" value="9"/>	
	daily	<input type="text"/>	
	monthly	<input type="text" value="x"/>	
<i>mark only one with an x</i>	quarterly	<input type="text"/>	Violation Base Penalty
	semiannual	<input type="text"/>	<input type="text" value="\$2,500"/>
	annual	<input type="text"/>	
	single event	<input type="text"/>	
<input type="text" value="One monthly event is recommended from the July 21, 2008 investigation date to the July 30, 2008 date of compliance."/>			
Good Faith Efforts to Comply			<input type="text" value="\$625"/>
	25.0% Reduction		
	Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text" value="x"/>	<input type="text"/>	
N/A	<input type="text"/>	(mark with x)	
Notes	<input type="text" value="The Respondents came into compliance on July 30, 2008."/>		
Violation Subtotal			<input type="text" value="\$1,875"/>
Economic Benefit (EB) for this violation			Statutory Limit Test
Estimated EB Amount	<input type="text" value="\$9"/>		Violation Final Penalty Total
			<input type="text" value="\$1,875"/>
This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$1,875"/>

Economic Benefit Worksheet

Respondent City of Marshall and Allied Waste Systems, Inc.
Case ID No. 36534
Reg. Ent. Reference No. RN102994753
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				0.00	\$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	\$7,470	21-Jul-2008	30-Jul-2008	0.02	\$9	n/a	\$9
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to remove and properly dispose of the municipal solid waste. The Date Required is the investigation date and the Final Date is the 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

Approx. Cost of Compliance

\$7,470

TOTAL

\$9

Screening Date 16-Sep-2008	Docket No. 2008-1511-MSW-E	PCW		
Respondent City of Marshall and Allied Waste Systems, Inc.	<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 36534	<small>PCW Revision June 12, 2008</small>			
Reg. Ent. Reference No. RN102994753				
Media [Statute] Municipal Solid Waste				
Enf. Coordinator Clinton Sims				
Violation Number <input type="text" value="2"/>				
Rule Cite(s)	30 Tex. Admin. Code § 330.233(a)(2)			
Violation Description	Failed to properly control windblown material and litter throughout the Facility, as documented during an investigation conducted on July 21, 2008. Specifically, the Respondents allowed spilled and windblown trash to accumulate along the entrance access road between Five Notch Road and the Facility's primary waste off-loading dock.			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="10%"/>
>> Programmatic Matrix				
Falsification				
Major Moderate Minor				
<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>				
				Percent <input type="text" value="0%"/>
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed protective levels.			
Adjustment <input type="text" value="\$9,000"/>				
<input type="text" value="\$1,000"/>				
Violation Events				
Number of Violation Events <input type="text" value="1"/>		Number of violation days <input type="text" value="57"/>		
mark only one with an x	daily	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input checked="" type="checkbox"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
single event	<input type="text"/>			
Violation Base Penalty <input type="text" value="\$1,000"/>				
One quarterly event is recommended from the July 21, 2008 investigation date to the September 16, 2008 screening date.				
Good Faith Efforts to Comply		<input type="text" value="10.0%"/> Reduction	<input type="text" value="\$100"/>	
		Before NOV NOV to EDRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input checked="" type="checkbox"/>		
N/A	<input type="text"/>	(mark with x)		
Notes	The Respondents came into compliance on September 30, 2008.			
Violation Subtotal			<input type="text" value="\$900"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount <input type="text" value="\$5"/>		Violation Final Penalty Total <input type="text" value="\$900"/>		
This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$900"/>	

Economic Benefit Worksheet

Respondent: City of Marshall and Allied Waste Systems, Inc.
Case ID No.: 36534
Reg. Ent. Reference No.: RN102994753
Media: Municipal Solid Waste
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$500	21-Jul-2008	30-Sep-2008	0.19	\$5	n/a	\$5
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Actual cost to pick up all windblown litter on a daily basis. The Date Required is the investigation date and the Final Date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$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 \$500 **TOTAL** \$5

Screening Date 16-Sep-2008 **Docket No.** 2008-1511-MSW-E **PCW**
Respondent City of Marshall and Allied Waste Systems, Inc. *Policy Revision 2 (September 2002)*
Case ID No. 36534 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN102994753
Media [Statute] Municipal Solid Waste
Enf. Coordinator Clinton Sims
Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 330.245(k)
Violation Description Failed to take appropriate measures to control ponded water at a municipal solid waste facility to avoid creating an odor nuisance, as documented during an investigation conducted on July 21, 2008. Specifically, stagnant water with significant objectionable odors was observed ponding on the ground between the Facility's primary waste off-loading dock and Parker Creek.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

OR **Percent** 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 protective levels.
Adjustment \$9,000

Violation Events

Number of Violation Events: 1 9 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 from the July 21, 2008 investigation date to the July 30, 2008 date of compliance.

Good Faith Efforts to Comply 25.0% Reduction **\$250**

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

Notes The Respondent came into compliance on July 30, 2008.
Violation Subtotal \$750

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount: \$1 **Violation Final Penalty Total** \$750
This violation Final Assessed Penalty (adjusted for limits) \$750

Economic Benefit Worksheet

Respondent: City of Marshall and Allied Waste Systems, Inc.

Case ID No.: 36534

Reg. Ent. Reference No.: RN102994753

Media: Municipal Solid Waste

Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$500	21-Jul-2008	30-Jul-2008	0.02	\$1	n/a	\$1
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to control ponded water at a municipal solid waste facility. The Date Required is the investigation date and the Final Date is the 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

Approx. Cost of Compliance

\$500

TOTAL

\$1



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	25-Aug-2008	Screening	16-Sep-2008	EPA Due	
	PCW	17-Sep-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Marshall and Allied Waste Systems, Inc.		
Reg. Ent. Ref. No.	RN102994753		
Facility/Site Region	5-Tyler	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	36534	No. of Violations	1
Docket No.	2008-1511-MSW-E	Order Type	1660
Media Program(s)	Waste Tires	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Clinton Sims
		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	\$2,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes	No change due to average performer classification.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondents do not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$625
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$3	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,393	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,875
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$1,875
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,875
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DEFERRAL	20.0% Reduction	Adjustment	-\$375
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral offered for expedited settlement.
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PAYABLE PENALTY	\$1,500
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Screening Date: 16-Sep-2008

Docket No.: 2008-1511-MSW-E

PCW

Respondent: City of Marshall and Allied Waste Systems, Inc.

Policy Revision 2 (September 2002)

Case ID No.: 36534

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN102994753

Media [Statute]: Waste Tires

Enf. Coordinator: Clinton Sims

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	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

No change due to average performer classification.

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

Screening Date 16-Sep-2008		Docket No. 2008-1511-MSW-E		PCW	
Respondent City of Marshall and Allied Waste Systems, Inc.				<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 36534				<small>PCW Revision October 30, 2008</small>	
Reg. Ent. Reference No. RN102994753					
Media [Statute] Waste Tires					
Enf. Coordinator Clinton Sims					
Violation Number		<input type="text" value="1"/>			
Rule Cite(s)		<input type="text" value="30 Tex. Admin. Code § 328.60(a)"/>			
Violation Description		<input type="text" value="Failed to obtain a scrap tire storage site registration prior to storing more than 500 scrap tires on the ground, as documented during an investigation conducted July 21, 2008. Specifically, approximately 550 scrap tires were observed on the ground on the north side of the Facility."/>			
Base Penalty				<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="0%"/>	
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="25%"/>	
Matrix Notes		<input type="text" value="100% of the rule requirement was not met."/>			
Adjustment				<input type="text" value="\$7,500"/>	
				<input type="text" value="\$2,500"/>	
Violation Events					
Number of Violation Events		<input type="text" value="1"/>	Number of violation days <input type="text" value="18"/>		
<small>mark only one with an x</small>	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	<input checked="" type="checkbox"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
Violation Base Penalty				<input type="text" value="\$2,500"/>	
<input type="text" value="One monthly event is recommended from the July 21, 2008 investigation date to the August 8, 2008 date of compliance."/>					
Good Faith Efforts to Comply		<input type="text" value="25.0%"/>	Reduction		
		<input type="text" value="Before NOV"/>	<input type="text" value="NOV to EDRP/Settlement Offer"/>		
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>			
N/A	<input type="text"/>	<small>(mark with x)</small>			
Notes		<input type="text" value="The Respondents came into compliance on August 8, 2008."/>			
Violation Subtotal				<input type="text" value="\$1,875"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test			
Estimated EB Amount		<input type="text" value="\$3"/>	Violation Final Penalty Total <input type="text" value="\$1,875"/>		
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$1,875"/>	

Economic Benefit Worksheet

Respondent: City of Marshall and Allied Waste Systems, Inc.
Case ID No.: 36534
Reg. Ent. Reference No.: RN102994753
Media: Waste Tires
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$1,393	21-Jul-2008	8-Aug-2008	0.05	\$3	n/a	\$3
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Actual cost to remove and properly dispose of the scrap tires located at the Facility. The Date Required is the investigation date and the Final Date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$1,393	TOTAL	\$3
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Compliance History Report

Customer/Respondent/Owner-Operator: CN600713481 Allied Waste Systems, Inc. Classification: AVERAGE Rating: 1.92
Regulated Entity: RN102994753 CITY OF MARSHALL CONVENIENCE STATION Classification: AVERAGE Site Rating: 3.01
BY DEFAULT
ID Number(s):
Location: 2300 FIVE NOTCH RD, MARSHALL, TX, 75671 Rating Date: 9/1/2008 Repeat Violator: NO
TCEQ Region: REGION 05 - TYLER
Date Compliance History Prepared: October 07, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 07, 2003 to October 07, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Clinton Sims Phone: (512) 239-6933

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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

Compliance History Report

Customer/Respondent/Owner-Operator: CN600337612 City of Marshall Classification: AVERAGE Rating: 1.57
Regulated Entity: RN102994753 CITY OF MARSHALL CONVENIENCE STATION Classification: Site Rating:
ID Number(s):
Location: 2300 FIVE NOTCH RD, MARSHALL, TX, 75671
TCEQ Region: REGION 05 - TYLER
Date Compliance History Prepared: October 21, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 21, 2003 to October 21, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Clinton Sims Phone: (512) 239-6933

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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
CITY OF MARSHALL AND ALLIED
WASTE SYSTEMS, INC.
RN102994753

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

AGREED ORDER
DOCKET NO. 2008-1511-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Marshall and Allied Waste Systems, Inc. ("the Respondents") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The City of Marshall owns and Allied Waste Systems, Inc. operates a citizen's convenience station at 2300 Five Notch Road in Marshall, Harrison County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about August 27, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Five Thousand Four Hundred Dollars (\$5,400) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Two Thousand One Hundred Sixty Dollars (\$2,160) of the administrative penalty and One Thousand Eighty Dollars (\$1,080) is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty. Two Thousand One Hundred Sixty Dollars (\$2,160) shall be conditionally offset by the Respondents' completion of a Supplemental Environmental Project.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondents have implemented the following corrective measures at the Facility:
 - a. The TCEQ Tyler Regional Office received documentation showing that 667 passenger tires, two truck tires, and one tractor tire had been removed on August 5, 2008 and August 8, 2008 and properly manifested for disposal.
 - b. The TCEQ Tyler Regional Office received photographs verifying that all waste that was on the ground had been picked up and placed in roll-off containers, and sent to the Allied Waste Pinehill Landfill for disposal on July 29, 2008 and July 30, 2008. In addition, the black, oily substance from an overturned 55-gallon plastic drum that was discharged on to the ground between the Facility's primary off-loading dock and Parker Creek had been properly removed and disposed.
 - c. The TCEQ Tyler Regional Office received photographs indicating that the area behind the primary waste off-loading dock where the ponded stagnant water was previously observed had been graded and is no longer capable of creating a nuisance condition on July 30, 2008.
 - d. A TCEQ Tyler Regional Office investigator visited the Facility on September 30, 2008, and observed that windblown material and litter is properly controlled throughout the Facility.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines the Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondents are alleged to have:

1. Failed to obtain a scrap tire storage site registration prior to storing more than 500 scrap tires on the ground, in violation of 30 TEX. ADMIN. CODE § 328.60(a), as documented during an investigation conducted on July 21, 2008. Specifically, approximately 550 scrap tires were observed on the ground on the north side of the Facility.
2. Failed to prevent the discharge of municipal solid waste into or adjacent to water of the state and to prohibit the unloading and depositing of municipal solid waste in an unauthorized area of a municipal solid waste facility, in violation of 30 TEX. ADMIN. CODE §§ 330.15, 330.225(b) and TEX. WATER CODE § 26.121, as documented during an investigation conducted on July 21, 2008. Specifically, approximately 1,200 cubic yards of solid waste (including lumber, old mattresses, old furniture, an old hot water heater, old washing machines, wooden pallets, trash in plastic bags, cardboard boxes, plastic buckets, various types of scrap metal, and construction debris) was observed piled on the ground behind and adjacent to the primary waste off-loading dock. In addition, a black, oily substance from an overturned 55-gallon plastic drum was observed discharged on to the ground between the Facility's primary off-loading dock and Parker Creek.
3. Failed to properly control windblown material and litter throughout the Facility, in violation of 30 TEX. ADMIN. CODE § 330.233(a)(2), as documented during an investigation conducted on July 21, 2008. Specifically, the Respondents allowed spilled and windblown trash to accumulate along the entrance access road between Five Notch Road and the Facility's primary waste off-loading dock.
4. Failed to take appropriate measures to control ponded water at a municipal solid waste facility to avoid creating an odor nuisance, in violation of 30 TEX. ADMIN. CODE § 330.245(k), as documented during an investigation conducted on July 21, 2008. Specifically, stagnant water with significant objectionable odors was observed ponding on the ground between the Facility's primary waste off-loading dock and Parker Creek.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Marshall and Allied Waste Systems, Inc., Docket No. 2008-1511-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. The Respondents shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Two Thousand One Hundred Sixty Dollars (\$2,160) of the assessed administrative penalty shall be offset with the condition that the Respondents implement the SEP defined in Attachment A, incorporated herein by reference. The Respondents' obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The Respondents are jointly and severally liable for the violations documented on this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Stein

For the Executive Director

8/7/2009

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

Frank Johnson

Signature

4-7-09

Date

Frank Johnson

Name (Printed or typed)
Authorized Representative of
City of Marshall

City Manager

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

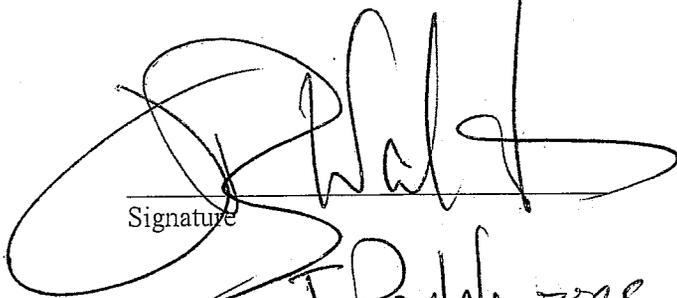
8/7/2009
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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



Signature

J. Roy Walters

Name (Printed or typed)
Authorized Representative of
Allied Waste Systems, Inc.

4.6.09
Date

GENERAL MANAGER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Attachment A

Docket Number: 2008-1511-MSW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondents: City of Marshall and Allied Waste Systems, Inc.
Payable Penalty Amount: Four Thousand Three Hundred Twenty Dollars (\$4,320)
SEP Amount: Two Thousand One Hundred Sixty Dollars (\$2,160)
Type of SEP: Pre-approved
Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Unauthorized Trash Dump Clean-Up
Location of SEP: Harrison County

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

1. Project Description

A. Project

The Respondents shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondents certify that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

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

2. Performance Schedule

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

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

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

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

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

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondents shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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

