

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1868-MLM-E

TCEQ ID: RN105610273

CASE NO.: 36893

RESPONDENT NAME: DAVID PARKER

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 checked="" 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 VIOLATIONS OCCURRED: 3549 North US Highway 59, Jefferson, Marion County

TYPE OF OPERATION: Unauthorized municipal solid waste transfer facility

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: A complaint was received alleging that trash was being dumped and burned at the site. A subsequent complaint investigation was performed in response to a complaint received on December 5, 2008. A Notice of Enforcement was mailed to the Respondent on March 13, 2009.

INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired September 21, 2009. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney:** Mr. Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
- TCEQ Enforcement Coordinator:** Mr. Clinton Sims, Waste Enforcement Section, MC 128, (512) 239-6933
- TCEQ Regional Contact:** Mr. Michael Brashear, Tyler Regional Office, MC R-05, (903) 535-5176
- Respondent:** Mr. David Parker, 3549 North US Highway 59, Jefferson, Texas 75657
- 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 checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: August 15, 2008</p> <p>Date of Investigation Relating to this Case: August 20, 2008</p> <p>Date of NOE Relating to this Case: October 26, 2008</p> <p>Background Facts: The case was referred to the Litigation Division on May 6, 2009. The EDRP was filed June 23, 2009, 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 EDRP on June 25, 2009. The Respondent failed to answer the EDRP, 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> <ol style="list-style-type: none"> Failed to comply with the general prohibition on outdoor burning, failed to prevent the unauthorized disposal of MSW, and failed to prevent the discharge of MSW into or adjacent to any water in the state [30 TEX. ADMIN. CODE §§ 111.201 and 330.15(a)(1) and TEX. WATER CODE § 26.121(a)]. Failed to register as a MSW transfer station [30 TEX. ADMIN. CODE § 330.9(a)]. Failed, as a transporter of MSW, to ensure that all MSW collected is unloaded only at authorized facilities and failed to maintain records that all wastes were taken to an authorized MSW facility [30 TEX. ADMIN. CODE § 330.103(b) and (c)]. Failed, as a transporter of MSW, to prevent the discharge of solid waste from the vehicle on the way to an authorized disposal facility and failed to properly maintain MSW collection vehicles to prevent the loss of solid wastes during collection [30 TEX. ADMIN. CODE § 330.107(b) and 330.105(a)]. 	<p>Total Assessed: \$ 10,941</p> <p>Total Deferred: \$0 <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: \$10,941</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 Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately, cease all unauthorized waste burning, waste disposal, unauthorized discharges, and MSW transfer operations at the Facility. Within 30 days: <ol style="list-style-type: none"> Remove all municipal solid waste from the Facility and dispose of the waste at an authorized facility; Develop and implement procedures to ensure that all solid waste collected is unloaded only at authorized facilities; Develop and implement procedures to properly control windblown materials and litter from the waste collection point and along the route to the authorized destination; Properly maintain all municipal solid waste collection vehicles to prevent the loss of solid wastes during collection; and Maintain proper records to document that all wastes collected are taken to an authorized facility Within 45 days, submit written certification demonstrating compliance with these Ordering Provisions.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	3-Nov-2008		
	PCW	7-May-2009	Screening	5-Dec-2008
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	David Parker
Reg. Ent. Ref. No.	RN105610273
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36893	No. of Violations	4
Docket No.	2008-1868-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Air	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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes

Culpability Enhancement **Subtotal 4**

Notes

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

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts	\$6,442
Approx. Cost of Compliance	\$84,632

*Capped at the Total EB \$ Amount

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 5-Dec-2008

Docket No. 2008-1868-MLM-E

PCW

Respondent David Parker

Policy Revision 2 (September 2002)

Case ID No. 36893

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105610273

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 (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%

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) 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 adjustments for compliance history.

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

Screening Date 5-Dec-2008

Docket No. 2008-1868-MLM-E

PCW

Respondent David Parker

Policy Revision 2 (September 2002)

Case ID No. 36893

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105610273

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 111.201 and 330.15(a)(1) and Tex. Water Code § 26.121(a)

Violation Description

Failed to comply with the general prohibition on outdoor burning, failed to prevent the unauthorized disposal of municipal solid waste ("MSW"), and failed to prevent the discharge of MSW into or adjacent to any water in the state. Specifically, approximately 400 cubic yards of MSW, of which 200 cubic yards had been burned, was disposed of in two large piles at the rear of the property. The disposal site is located directly adjacent to an unnamed branch of Black Cypress Bayou.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

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

\$1,000

Violation Events

Number of Violation Events 2

108 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,000

Two quarterly events are recommended from the August 20, 2008 investigation date to the December 5, 2008 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,044

Violation Final Penalty Total \$2,430

This violation Final Assessed Penalty (adjusted for limits) \$2,430

Economic Benefit Worksheet

Respondent: David Parker
Case ID No.: 36893
Reg. Ent. Reference No.: RN105610273
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
<small>No commas or \$</small>							

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	\$1,941	20-Aug-2008	12-Sep-2009	1.06	\$103	n/a	\$103
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and properly dispose of the MSW at an authorized facility. 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]	\$1,941	20-Aug-2008	20-Aug-2008	0.00	\$0	\$1,941	\$1,941
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to properly dispose of approximately 200 cubic yards of waste that was disposed of by burning. The Date Required is the investigation date and the Final Date is the violation end date.

Approx. Cost of Compliance

\$3,882

TOTAL

\$2,044

Screening Date 5-Dec-2008 **Docket No.** 2008-1868-MLM-E **PCW**
Respondent David Parker *Policy Revision 2 (September 2002)*
Case ID No. 36893 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105610273
Media [Statute] Municipal Solid Waste
Enf. Coordinator Clinton Sims

Violation Number
Rule Cite(s)
Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm				Percent <input type="text" value="0%"/>
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="10%"/>
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input checked="" type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

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

Notes

Violation Subtotal

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

Estimated EB Amount Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: David Parker
Case ID No.: 36893
Reg. Ent. Reference No.: RN105610273
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
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$75,000	20-Aug-2008	12-Sep-2009	1.06	\$3,986	n/a	\$3,986
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to register as a municipal solid waste transfer facility. 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

\$75,000

TOTAL

\$3,986

Screening Date 5-Dec-2008

Docket No. 2008-1868-MLM-E

PCW

Respondent David Parker

Policy Revision 2 (September 2002)

Case ID No. 36893

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105610273

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 330.103(b) and (c)

Violation Description

Failure by a transporter of MSW to ensure that all MSW collected is unloaded only at authorized facilities and failure to maintain records that all wastes were taken to an authorized MSW facility, as documented during an investigation conducted on August 20, 2008.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 108 Number of violation days

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

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$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 for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$40

Violation Final Penalty Total \$1,215

This violation Final Assessed Penalty (adjusted for limits) \$1,215

Economic Benefit Worksheet

Respondent: David Parker
Case ID No.: 36893
Reg. Ent. Reference No.: RN105610273
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
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	\$750	20-Aug-2008	12-Sep-2009	1.06	\$40	n/a	\$40
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement procedures to ensure that all solid waste collected is unloaded only at authorized facilities and maintain records to document that all wastes are taken to an authorized facility. 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

\$750

TOTAL

\$40

Screening Date 5-Dec-2008

Docket No. 2008-1868-MLM-E

PCW

Respondent David Parker

Policy Revision 2 (September 2002)

Case ID No. 36893

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105610273

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code §§ 330.107(b) and 330.105(a)

Violation Description

Failure by a transporter of MSW to prevent the discharge of solid waste from the vehicle on the way to an authorized disposal facility and failure to properly maintain MSW collection vehicles to prevent the loss of solid wastes during collection. Specifically, windblown MSW was observed around the site and along the road to the site and MSW transport vehicles were not fully enclosed to prevent the loss of MSW.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

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

\$1,000

Violation Events

Number of Violation Events 2

108 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,000

Two quarterly events are recommended from the August 20, 2008 investigation date to the December 5, 2008 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$372

Violation Final Penalty Total \$2,430

This violation Final Assessed Penalty (adjusted for limits) \$2,430

Economic Benefit Worksheet

Respondent: David Parker

Case ID No.: 36893

Reg. Ent. Reference No.: RN105610273

Media: Municipal Solid Waste

Violation No.: 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$5,000	20-Aug-2008	12-Sep-2009	1.06	\$18	\$354	\$372
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly maintain municipal solid waste collection vehicles to prevent the loss of solid wastes during collection. 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

\$5,000

TOTAL

\$372

Compliance History Report

Customer/Respondent/Owner-Operator: CN603400888 PARKER, DAVID Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105610273 DAVID PARKER RYAN BULLARD Classification: AVERAGE Site Rating: 3.01
BY DEFAULT

ID Number(s):

Location: 3549 N US HWY 59, JEFFERSON, TX, 75657

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: December 05, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 05, 2003 to December 05, 2008

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

Name: Clinton Sims Phone: 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
6. Rating Date: 9/1/2008 Repeat Violator: NO

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DAVID PARKER,
RN105610273**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2008-1868-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 chs. 7 and 26, 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 David Parker.

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

FINDINGS OF FACT

1. David Parker operates an unauthorized municipal solid waste transfer facility located at 3549 North US Highway 59, Jefferson, Marion County, Texas (the "Facility").
2. The Facility involves or involved the management and/or disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361 and consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12). The Facility has discharged MSW into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation conducted on August 20, 2008, a TCEQ Tyler Regional Office investigator documented that David Parker:
 - a. Failed to comply with the general prohibition on outdoor burning, failed to prevent the unauthorized disposal of MSW, and failed to prevent the discharge of MSW into or adjacent to any water in the state. Specifically, approximately 200 cubic yards of burned MSW was disposed of in two large piles at the rear of the Facility, which is located directly adjacent to an unnamed branch of Black Cypress Bayou;

- b. Failed to register as a MSW transfer station;
 - c. Failed, as a transporter of MSW, to ensure that all MSW collected is unloaded only at authorized facilities and failed to maintain records that all wastes were taken to an authorized MSW facility; and
 - d. Failed, as a transporter of MSW, to prevent the discharge of solid waste from the vehicle on the way to an authorized disposal facility and failed to properly maintain MSW collection vehicles to prevent the loss of solid wastes during collection. Specifically, windblown MSW was observed around the Facility and along the road to the Facility and MSW transport vehicles were not fully enclosed to prevent the loss of MSW.
4. David Parker received notice of the violations on or about November 1, 2008.
 5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of David Parker" (the "EDPRP") in the TCEQ Chief Clerk's office on June 23, 2009.
 6. By letter dated June 23, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served David Parker with notice of the EDPRP. According to the return receipt "green card", David Parker received notice of the EDPRP on June 25, 2009, as evidenced by the signature on the card.
 7. More than 20 days have elapsed since David Parker received notice of the EDPRP provided by the Executive Director. David Parker failed to file an answer, 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, David Parker is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., David Parker failed to comply with the general prohibition on outdoor burning, failed to prevent the unauthorized disposal of MSW, and

- failed to prevent the discharge of MSW into or adjacent to any water in the state, in violation of 30 TEX. ADMIN. CODE §§ 111.201 and 330.15(a)(1) and TEX. WATER CODE § 26.121(a).
3. As evidenced by Finding of Fact No. 3.b., David Parker failed to register as a MSW transfer station, in violation of 30 TEX. ADMIN. CODE § 330.9(a).
 4. As evidenced by Finding of Fact No. 3.c., David Parker failed, as a transporter of MSW, to ensure that all MSW collected is unloaded only at authorized facilities and failed to maintain records that all wastes were taken to an authorized MSW facility, in violation of 30 TEX. ADMIN. CODE § 330.103(b) and (c).
 5. As evidenced by Finding of Fact No. 3.d., David Parker failed, as a transporter of MSW, to prevent the discharge of solid waste from the vehicle on the way to an authorized disposal facility and failed to properly maintain MSW collection vehicles to prevent the loss of solid wastes during collection, in violation of 30 TEX. ADMIN. CODE § 330.107(b) and 330.105(a).
 6. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served David Parker with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
 7. As evidenced by Finding of Fact No. 7, David Parker failed to file a timely answer 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 David Parker and assess the penalty recommended by the Executive Director.
 8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against David Parker 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.
 9. An administrative penalty in the amount of ten thousand nine hundred forty-one dollars (\$10,941.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
 10. 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. David Parker is assessed an administrative penalty in the amount of ten thousand nine hundred forty-one dollars (\$10,941.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and David Parker'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: David Parker; Docket No.2008-1868-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. David Parker shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, David Parker shall cease all unauthorized waste burning, waste disposal, discharge of MSW into or adjacent to any water in the state, and MSW transfer operations at the Facility.
 - b. Within 30 days after the effective date of this Order, David Parker shall:
 - i. Remove all municipal solid waste from the Facility and dispose of the waste at an authorized facility;
 - ii. Develop and implement procedures to ensure that all solid waste collected is unloaded only at authorized facilities, in accordance with 30 TEX. ADMIN. CODE § 330.103;

- iii. Develop and implement procedures to properly control windblown materials and litter from the waste collection point and along the route to the authorized destination, in accordance with 30 TEX. ADMIN. CODE § 330.107;
 - iv. Properly maintain all municipal solid waste collection vehicles to prevent the loss of solid wastes during collection, in accordance with 30 TEX. ADMIN. CODE § 330.105; and
 - v. Maintain proper records to document that all wastes collected are taken to an authorized facility, in accordance with 30 TEX. ADMIN. CODE § 330.103.
- c. Within 45 days after the effective date of this Order, David Parker shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

David Parker shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. to:

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

with a copy to:

Michael Brashear, Waste Section Manager
Texas Commission on Environmental Quality
Tyler Regional Office
2916 Teague Drive

Tyler, Texas 75701-3734

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

David Parker
Docket No. 2008-1868-MLM-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF PHILLIP M. GOODWIN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Phillip M. Goodwin. 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 David Parker” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 23, 2009.

I sent the EDPRP to David Parker at his last known address on June 23, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, David Parker received notice of the EDPRP on June 25, 2009, as evidenced by the signature on the card.

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



Phillip M. Goodwin
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Phillip M. Goodwin, 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 5th day of August, A.D., 2009.



Notary Signature

Notary Stamp

