

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-0135-MLM-E TCEQ ID: RN105159453 CASE NO.: 37080
RESPONDENT NAME: ALVIN CLOUD

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION OCCURRED: 6105 Avenue L, Santa Fe, Galveston County</p> <p>TYPE OF OPERATION: real property</p> <p>SMALL BUSINESS: N/A</p> <p>OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that the Respondent was burning materials on his land. There is no record of additional pending enforcement actions regarding this facility.</p> <p>INTERESTED PARTIES: The complainant has not expressed 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.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired January 4, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Peipey Tang, Litigation Division, MC 175, (512) 239-0654 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Ms. Kimberly Morales, Air Enforcement Section, MC R-12, (713) 422-8938 TCEQ Regional Contact: Ms. Linda Vasse, Houston Regional Office, MC R-12, (713) 767-3637 Respondent: Mr. Alvin Cloud, 6105 Avenue L, Santa Fe, Texas 77510 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:</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: October 17, 2008</p> <p>Date of Investigation Relating to this Case: October 17, 2008</p> <p>Date of NOE Relating to this Case: December 18, 2008</p> <p>Background Facts: The EDPRP was filed on June 23, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. Neither the certified mail nor the first class mail was returned.</p> <p>The EDPRP was re-filed on September 24, 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 EDPRP on September 26, 2009, as evidenced by the signature on the card. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>MLM: Failed to prevent the unauthorized burning of approximately 40 cubic yards of material and the disposal of municipal solid waste [30 TEX. ADMIN. CODE §§ 111.201 and 330.15(c) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$1,580</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: \$1,580</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"> 1. Immediately: <ol style="list-style-type: none"> a. Cease allowing the unauthorized burning of any materials at the Site; and b. Cease allowing the disposal of any municipal solid waste at the Site. 2. Within 30 days; remove all municipal solid waste (including burned material) from the Site and dispose of it at an authorized facility. 3. Within 45 days, submit written certification to demonstrate compliance with Ordering Provisions Nos. 1 and 2.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	5-Jan-2009	Screening	28-Jan-2009	EPA Due	
	PCW	3-Jun-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Alvin Cloud		
Reg. Ent. Ref. No.	RN105159453		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37080	No. of Violations	1
Docket No.	2009-0135-MLM-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	Yes
Multi-Media	Municipal Solid Waste	Enf. Coordinator	Roshondra Lowe
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,000
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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	10.0% Enhancement	Subtotals 2, 3, & 7	\$100
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Notes	Penalty enhanced due to two-NOVs for same or similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$525	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,480	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,100
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OTHER FACTORS AS JUSTICE MAY REQUIRE	43.6%	Adjustment	\$480
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended adjustment to capture the avoided cost associated with the violation.
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Final Penalty Amount	\$1,580
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,580
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$1,580
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Screening Date 28-Jan-2009

Docket No. 2009-0135-MLM-E

PCW

Respondent Alvin Cloud

Policy Revision 2 (September 2002)

Case ID No. 37080

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105159453

Media [Statute] Air

Enf. Coordinator Roshondra Lowe

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)	2	10%
	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) 10%

>> 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

Penalty enhanced due to two NOVs for same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 28-Jan-2009	Docket No. 2009-0135-MLM-E	PCW		
Respondent Alvin Cloud		<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 37080		<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN105159453				
Media [Statute] Air				
Enf. Coordinator Roshondra Lowe				
Violation Number <input type="text" value="1"/>				
Rule Cite(s)	Tex. Admin. Code §§ 111.201 and 330.15(c), and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to prevent the unauthorized burning of approximately 40 cubic yards of materials and the disposal of municipal solid waste. Specifically, during a complaint investigation on October 17, 2008, Galveston County investigators documented a pile of debris burning at the site which included treated lumber, plastics, tires, and asphalt shingles. The Santa Fe Fire Department extinguished the fire, and a large pile of debris remained at the site.			
	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 in the Houston-Galveston-Brazoria nonattainment area has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.			
	Adjustment	<input type="text" value="\$9,000"/>		
				<input type="text" value="\$1,000"/>
Violation Events				
	Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="1"/>	Number of violation days
<small>mark only one with an x</small>	daily	<input type="text"/>	<input type="text"/>	<input type="text"/>
	weekly	<input type="text"/>	<input type="text"/>	<input type="text"/>
	monthly	<input type="text"/>	<input type="text"/>	<input type="text"/>
	quarterly	<input type="text"/>	<input type="text"/>	<input type="text"/>
	semiannual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	annual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	single event	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>
		Violation Base Penalty	<input type="text" value="\$1,000"/>	
	One single event is recommended based upon documentation of the violation during the October 17, 2008 investigation.			
Good Faith Efforts to Comply				
	0.0% Reduction	<input type="text" value="\$0"/>		
	Before NOV	NOV to EDPRP/Settlement Offer		
	Extraordinary	<input type="text"/>		
	Ordinary	<input type="text"/>		
	N/A	<input checked="" type="checkbox"/>	(mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.			
		Violation Subtotal	<input type="text" value="\$1,000"/>	
Economic Benefit (EB) for this violation				
	Estimated EB Amount	<input type="text" value="\$525"/>	Violation Final Penalty Total	<input type="text" value="\$1,580"/>
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,580"/>		

Economic Benefit Worksheet

Respondent: Alvin Cloud
Case ID No.: 37080
Reg. Ent. Reference No.: RN105159453
Media: Air
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
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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	\$1,000	17-Oct-2008	14-Sep-2009	0.91	\$45	n/a	\$45
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of properly disposing of unauthorized debris at the site. The date required is the date of the violation. The final date is based on the date corrective actions are expected to be completed.

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)	\$480	17-Oct-2008	17-Oct-2008	0.00	\$0	\$480	\$480

Notes for AVOIDED costs

Estimated cost to properly dispose of approximately 40 cubic yards of waste that was disposed of by burning. The date required and the final date are the date unauthorized burning occurred.

Approx. Cost of Compliance

\$1,480

TOTAL

\$525

Compliance History Report

Customer/Respondent/Owner-Operator: CN603156860 CLOUD, ALVIN Classification: AVERAGE Rating: 2.00
Regulated Entity: RN105159453 ALVIN CLOUD Classification: AVERAGE Site Rating: 2.00

Location: 6105 AVENUE L, SANTA FE, TX, 77510

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: January 15, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 15, 2004 to January 15, 2009

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

Name: Roshondra Lowe Phone: (713) 767-3553

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.)

1 06/26/2007 (560862)

2 02/07/2008 (613415)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

SIM-1

Date: 02/05/2007 (541058)

Self NO

Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201

Description: No person may cause, suffer, allow or permit any outdoor burning within the State of Texas.

SIM-2

Date: 09/28/2007 (594133)

Self NO

Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201

Description: 30 TAC 111.201 states that no person may cause, suffer, allow or permit any outdoor burning within the State of Texas.

- 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
ALVIN CLOUD,
RN105159453**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-0135-MLM-E**

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

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

FINDINGS OF FACT

1. Mr. Cloud owns and operates real property located at 6105 Avenue L in Santa Fe, Galveston County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12). The Site involves or involved the disposal and management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on October 17, 2008, Galveston County Health District investigators documented that Mr. Cloud failed to prevent the unauthorized burning of approximately 40 cubic yards of material and the disposal of municipal solid waste. Specifically, Galveston County Health District investigators documented a pile of debris burning at the Site which included treated lumber, plastics, tires, and asphalt shingles. The Santa Fe Fire Department extinguished the fire and a large pile of debris remained at the Site.
4. Mr. Cloud received notice of the violation on or about December 23, 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 Alvin Cloud" (the "EDPRP") in the TCEQ Chief Clerk's office on June 23, 2009.
6. By letter dated on June 23, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Cloud with notice of the EDPRP. Neither the certified mail nor the first class mail was returned.
7. 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 Alvin Cloud" (the "EDPRP") in the TCEQ Chief Clerk's office on September 24, 2009.
8. By letter dated on September 24, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Cloud with notice of the EDPRP. According to the return receipt "green card," Mr. Cloud received notice of the EDPRP on September 26, 2009, as evidenced by the signature on the card.
9. More than 20 days have elapsed since Mr. Cloud received notice of the EDPRP, provided by the Executive Director. Mr. Cloud failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Cloud is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.054, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Cloud failed to prevent the unauthorized burning of approximately 40 cubic yards of material and the disposal of municipal solid waste, in violation of 30 TEX. ADMIN. CODE §§ 111.201 and 330.15(c) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact Nos. 7 and 8, the Executive Director has timely served Mr. Cloud with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

4. As evidenced by Finding of Fact No. 9, Mr. Cloud failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Cloud and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Cloud for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of one thousand five hundred eighty dollars (\$1,580.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Cloud is assessed an administrative penalty in the amount of one thousand five hundred eighty dollars (\$1,580.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Cloud'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: Alvin Cloud; Docket No. 2009-0135-MLM-E" to:

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

2. Mr. Cloud shall undertake the following technical requirements:

- a. Immediately after the effective date of this Order, Mr. Cloud shall:
 - i. Cease allowing the unauthorized burning of any materials at the Site, in accordance with 30 TEX. ADMIN. CODE § 111.201; and
 - ii. Cease allowing the disposal of any municipal solid waste at the Site.
- b. Within 30 days after the effective date of this Order, Mr. Cloud shall remove all municipal solid waste (including the burned material) from the Site and dispose of it at an authorized facility; and
- c. Within 45 days after the effective date of this Order, Mr. Cloud shall submit written certification demonstrating compliance with Ordering Provisions Nos. 2.a. and 2.b. The certification shall include detailed supporting documentation including receipts, monitoring records, training records, and/or other records to demonstrate compliance, and be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

The certification shall be submitted to:

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

with a copy to:

Linda Vasse and Manuel Bautista
Air Section, Managers
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Cloud. Mr. Cloud is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Mr. Cloud fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Cloud's failure to comply is not a violation of this Order. Mr. Cloud shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Cloud shall notify the Executive Director within seven days after Mr. Cloud becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Cloud shall be made in writing to the Executive Director. Extensions are not effective until Mr. Cloud receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Cloud if the Executive Director determines that Mr. Cloud has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF PEIPEY TANG

STATE OF TEXAS §
COUNTY OF TRAVIS §

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Alvin Cloud" (the "EDPRP") with the Office of the Chief Clerk on June 23, 2009.

I sent the EDPRP to Mr. Cloud at his last known address on June 23, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. Neither the certified mail nor the first class mail was returned.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Alvin Cloud" (the "EDPRP") with the Office of the Chief Clerk on September 24, 2009.

I sent the EDPRP to Mr. Cloud at his last known address on September 24, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. Mr. Cloud received notice of the EDPRP on September 26, 2009, as evidenced by the signature on the card.

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

Peipey Tang
Peipey Tang
Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 9th day of November, A.D., 2009.

Sarah J. Huddleston
Notary Signature

Notary Stamp

