

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2010-0583-MSW-E RN105808174 CASE NO. 39500
RESPONDENT NAME: DAVID TREVINO

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 type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 9514 County Road 2500, Lubbock, Lubbock County

TYPE OF OPERATION: unauthorized municipal solid waste disposal site

SMALL BUSINESS: N/A

OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that asphalt shingles had been disposed of at the Site without authorization. There is no record of additional pending enforcement actions regarding this facility location.

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

COMMENTS RECEIVED: The *Texas Register* comment period expired September 27, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Ms. Brianna Carlson, Waste Enforcement Section, MC R-15, (956) 430-6021

TCEQ Regional Contact: Mr. Jeff Bertl, Lubbock Regional Office, MC R-2, (806) 796-7092

Respondent: Mr. David Trevino, 9514 County Road 2500, Lubbock, Texas 79404

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: <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: September 9, 2009</p> <p>Dates of Investigation: September 9, 2009 (complaint); February 22, 2010 (follow-up)</p> <p>Date of NOE: March 15, 2010</p> <p>Background Facts: The EDPRP was filed on June 30, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>MSW: Failed to prevent the unauthorized disposal of municipal solid waste ("MSW") (32,976 cubic yards of mixed construction and demolition waste, tires, brush, and asphalt shingles) [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p>Total Assessed: \$10,500</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$10,500</p> <p>This is a Default Order. 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>Compliance History Classifications: <i>Person/CN</i> – Average <i>Site/RN</i> – Average</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>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately cease disposing of any additional MSW at the Site. 2. Within 45 days, certify compliance with Ordering Provision No. 1. 3. Remove all MSW from the Site and dispose it at an authorized facility in 30-day increments according to the following schedule: <ol style="list-style-type: none"> a. Within 30 days, remove 3,000 cu/yds of MSW; b. Within 60 days, remove an additional 3,000 cu/yds of MSW; c. Within 90 days, remove an additional 3,000 cu/yds of MSW; d. Within 120 days, remove an additional 3,000 cu/yds of MSW; e. Within 150 days, remove an additional 3,000 cu/yds of MSW; f. Within 180 days, remove an additional 3,000 cu/yds of MSW; and g. Within 270 days, remove all remaining MSW. 4. Within 30 days after the expiration of each compliance deadline listed in Ordering Provision No. 3, submit written certification and detailed supporting documentation to demonstrate the amount of MSW removed from the Site and the location of the authorized facility or facilities where the MSW was disposed during the previous 30-day period.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	22-Mar-2010			
	PCW	16-Apr-2010	Screening	9-Apr-2010	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	David Trevino				
Reg. Ent. Ref. No.	RN105808174				
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	39500	No. of Violations	1		
Docket No.	2010-0583-MSW-E	Order Type	Findings		
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Brianna Carlson		
		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	\$10,000
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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	5.0% Enhancement	Subtotals 2, 3, & 7	\$500
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Notes	Enhancement for one NOV with 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	\$13,262	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$306,374	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,500
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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	\$10,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,500
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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	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY	\$10,500
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Screening Date 9-Apr-2010

Docket No. 2010-0583-MSW-E

PCW

Respondent David Trevino

Policy Revision 2 (September 2002)

Case ID No. 39500

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105808174

Media [Statute] Municipal Solid Waste

Enf. Coordinator Brianna Carlson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of 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) 5%

>> 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

Enhancement for one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date	9-Apr-2010	Docket No.	2010-0583-MSW-E	PCW
Respondent	David Trevino	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	39500	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN105808174			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Brianna Carlson			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 330.15(c)			
Violation Description	Failed to prevent the unauthorized disposal of municipal solid waste at the Site. Specifically, Respondent disposed of approximately 32,976 cubic yards of mixed construction and demolition waste, tires, brush, and asphalt shingles at the Site.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	x			Percent 50%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent 0%

Matrix Notes
Human health or the environment has been exposed to significant amounts of pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events: 2 46 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$10,000

Two monthly events are recommended from the February 22, 2010 investigation date to the April 9, 2010 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.	
Violation Subtotal	\$10,000	

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

Estimated EB Amount \$13,262 **Violation Final Penalty Total** \$10,500

This violation Final Assessed Penalty (adjusted for limits) \$10,500

Economic Benefit Worksheet

Respondent David Trevino
Case ID No. 39500
Reg. Ent. Reference No. RN105808174
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	\$306,374	22-Feb-2010	4-Jan-2011	0.87	\$13,262	n/a	\$13,262
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 dispose of the waste at an authorized facility. The date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$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

\$306,374

TOTAL

\$13,262

Compliance History Report

Customer/Respondent/Owner-Operator: CN603537952 Trevino, David Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105808174 Trevino UNA Disposal Site Classification: AVERAGE Site Rating: 3.01
BY DEFAULT
ID Number(s):
Location: 9514 COUNTY ROAD 2500, LUBBOCK, TX, 79404
TCEQ Region: REGION 02 - LUBBOCK
Date Compliance History Prepared: April 16, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 16, 2005 to April 16, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Brianna Carlson Phone: 956/430-6021

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 03/15/2010 (788251)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 10/06/2009 (778119)
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
Description: Failure to prevent the disposal of waste at an unauthorized facility.
 - 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
DAVID TREVINO;
RN105808174**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-0583-MSW-E

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

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

FINDINGS OF FACT

1. Respondent operates an unauthorized municipal solid waste disposal site located at 9514 County Road 2500, Lubbock, Lubbock County, Texas (the "Site").
2. The Site involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on February 22, 2010, a TCEQ Lubbock Regional Office investigator documented that Respondent failed to prevent the unauthorized disposal of municipal solid waste ("MSW") at the Site. Specifically, Respondent disposed of approximately 32,976 cubic yards of mixed construction and demolition waste, tires, brush, and asphalt shingles at the Site.
4. Respondent received notice of the violation on or about March 20, 2010.
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 Trevino" (the "EDPRP") in the TCEQ Chief Clerk's office on June 30, 2010.
6. By letter dated June 30, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.

7. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent 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 Findings of Fact Nos. 1 and 2, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Respondent failed to prevent the unauthorized disposal ofMSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Respondent 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 Respondent 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 Respondent 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 ten thousand five hundred dollars (\$10,500.00) 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. Respondent is assessed an administrative penalty in the amount of ten thousand five hundred dollars (\$10,500.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent'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.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: David Trevino; Docket No. 2010-0583-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

3. Respondent shall undertake the following technical requirements:
- a. Immediately upon the effective date of this Order, Respondent shall cease disposing any additional MSW at the Site.
 - b. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, as described in Ordering Provision No. 3.d., below, to demonstrate compliance with Ordering Provision No. 3.a.
 - c. Respondent shall remove all MSW from the Site and dispose of the MSW at an authorized facility in 30-day increments according to the schedule set forth in Ordering Provisions Nos. 3.c.i. through 3.c.vii., below. The amount of MSW removed during each 30-day period shall be calculated using the weight/volume conversions set forth in 30 TEX. ADMIN. CODE § 330.675(a)(2), as applicable.
 - i. Within 30 days after the effective date of this Order, Respondent shall remove 3,000 cubic yards of MSW from the Site and dispose of the MSW at an authorized facility;
 - ii. Within 60 days after the effective date of this Order, Respondent shall remove an additional 3,000 cubic yards of MSW from the Site and dispose of the MSW at an authorized facility;
 - iii. Within 90 days after the effective date of this Order, Respondent shall remove an additional 3,000 cubic yards of MSW from the Site and dispose of the MSW at an authorized facility;
 - iv. Within 120 days after the effective date of this Order, Respondent shall remove an additional 3,000 cubic yards of MSW from the Site and dispose of the MSW at an authorized facility;
 - v. Within 150 days after the effective date of this Order, Respondent shall remove an additional 3,000 cubic yards of MSW from the Site and dispose of the MSW at an authorized facility;

- vi. Within 180 days after the effective date of this Order, Respondent shall remove an additional 3,000 cubic yards of MSW from the Site and dispose of the MSW at an authorized facility; and
 - vii. Within 270 days after the effective date of this Order, Respondent shall remove all remaining MSW from the Site and dispose of the MSW at an authorized facility.
- d. Within 30 days after the expiration of each compliance deadline listed in Ordering Provision Nos. 3.c.i. through 3.c.vii. above, Respondent shall submit written certification as described below, and include detailed supporting documentation, including photographs, receipts, and/or other records to demonstrate the amount of MSW removed from the Site and the location of the authorized facility or facilities where the MSW was disposed during the previous 30-day period. The written certifications 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 fines and imprisonment for knowing violations."

The certifications and supporting documentation 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:

Jeff Bertl, Waste Section Manager
Lubbock Regional Office
Texas Commission on Environmental Quality
5012 50th Street, Suite 100
Lubbock, Texas 79414-3426.

- 4. All relief not expressly granted in this Order is denied.
- 5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
- 6. If Respondent 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

7. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. 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.
10. 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF GARY K. SHIU

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

“My name is Gary K. Shiu. 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 Trevino” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 30, 2010.

The EDPRP was mailed to Respondent at his last known address on June 30, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

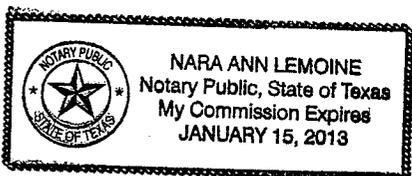
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Gary K. Shiu, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Gary K. Shiu, 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 5 day of October, A.D., 2010.





Notary Signature