

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0714-MSW-E RN102777778 CASE NO. 37628
RESPONDENT NAME: DANIEL L. MAULDIN DBA TRAVIS EQUIPMENT COMPANY

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

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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 VIOLATIONS OCCURRED: 3876 East Highway 287, Midlothian, Ellis County

TYPE OF OPERATION: wood mulching and compost facility

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired November 22, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-3400
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Ms. Judy Kluge, Waste Enforcement Section, MC R-4, (817)588-5825

TCEQ Regional Contact: Mr. Sam Barrett, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5903

Respondent: Mr. Daniel L. Mauldin, P.O. Box 420, Midlothian, TX 76065

Respondent's Attorney: Mr. Mark McPherson, Attorney at Law, 17400 Dallas Parkway, Suite 112, Dallas, Texas 75287

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint: N/A</p> <p>Date of Investigation: February 27, 2009</p> <p>Date of NOE: April 28, 2009</p> <p>Background Facts: The EDP RP was filed on October 8, 2009. The EDFARP was filed on January 7, 2010. Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on September 17, 2010.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>MSW:</p> <ol style="list-style-type: none"> Failed to properly notify the Executive Director of recycling operations for materials generated at municipal and industrial facilities [30 TEX. ADMIN. CODE § 328.5(b)]. Failed to maintain records pertaining to recyclable materials [30 TEX. ADMIN. CODE § 328.5(f)(1)]. Failed to obtain financial assurance for closure of the Facility [30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d)]. 	<p>Total Assessed: \$4,899</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 Paid/Due to General Revenue: \$211/\$4,688</p> <p>Respondent paid \$211 of the administrative penalty. The remaining amount of \$4,688 shall be payable in 24 monthly payments of \$100 each, followed by 11 monthly payments of \$208 each.</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: Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Either: <ol style="list-style-type: none"> Immediately: <ol style="list-style-type: none"> Cease accepting any recyclable material at the Facility until properly authorized; and Begin maintaining records pertaining to recyclable materials; and Within 60 days: <ol style="list-style-type: none"> Submit a notice of intent to operate a recycling facility; and Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility. Or, in lieu of Ordering Provision Nos. 1.a. through 1.b.ii., within 60 days remove all accumulated materials and dispose of it at an authorized facility. Within 75 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	4-May-2009			
	PCW	15-Sep-2010	Screening	8-May-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Daniel L. Mauldin d/b/a Travis Equipment Company				
Reg. Ent. Ref. No.	RN102777778				
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	37628	No. of Violations	3		
Docket No.	2009-0714-MSW-E	Order Type	1660		
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Judy Kluge		
		EC's Team	Enforcement Team 6		
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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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	30.0% Enhancement	Subtotals 2, 3, & 7	\$900
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Notes: Enhancement for one previous NOV with same or similar violations and one Default Order.

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

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: \$1,017
 Approx. Cost of Compliance: \$1,551
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,900
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OTHER FACTORS AS JUSTICE MAY REQUIRE	25.6%	Adjustment	\$999
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 3.

Final Penalty Amount \$4,899

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,899
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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.

PAYABLE PENALTY	\$4,899
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Screening Date 8-May-2009

Docket No. 2009-0714-MSW-E

PCW

Respondent Daniel L. Mauldin d/b/a Travis Equipment Company

Policy Revision 2 (September 2002)

Case ID No. 37628

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102777778

Media [Statute] Municipal Solid Waste

Enf. Coordinator Judy Kluge

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (<i>number of NOV's meeting criteria</i>)	1	5%
	Other written NOV's	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 30%

>> 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 previous NOV with same or similar violations and one Default Order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 8-May-2009 **Docket No.** 2009-0714-MSW-E **PCW**
Respondent Daniel L. Mauldin d/b/a Travis Equipment Company *Policy Revision 2 (September 2002)*
Case ID No. 37628 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102777778
Media [Statute] Municipal Solid Waste
Enf. Coordinator Judy Kluge

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 328.5(b)
Violation Description Failed to properly notify the Executive Director of recycling operations for materials generated at municipal and industrial facilities. Specifically, the Respondent stored an estimated 28,000 cubic yards of wood waste and had been conducting a mulching operation without submitting an accurate Notice of Intent.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 70 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended from the February 27, 2009 investigation date to the May 8, 2009 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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$1,633

This violation Final Assessed Penalty (adjusted for limits) \$1,633

Economic Benefit Worksheet

Respondent Daniel L. Mauldin d/b/a Travis Equipment Company
Case ID No. 37628
Reg. Ent. Reference No. RN10277778
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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	27-Feb-2009	14-Oct-2009	0.63	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to notify the Executive Director of recycling operations. Date Required is the investigation date and 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

\$100

TOTAL

\$3

Screening Date 8-May-2009 **Docket No.** 2009-0714-MSW-E **PCW**
Respondent Daniel L. Mauldin d/b/a Travis Equipment Company *Policy Revision 2 (September 2002)*
Case ID No. 37628 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN10277778
Media [Statute] Municipal Solid Waste
Enf. Coordinator Judy Kluge

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

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 Daniel L. Mauldin d/b/a Travis Equipment Company
Case ID No. 37628
Reg. Ent. Reference No. RN10277778
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
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	\$500	27-Feb-2009	14-Oct-2009	0.63	\$16	n/a	\$16
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 develop and implement a record keeping system. The Date Required is the date of the investigation 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

\$500

TOTAL

\$16

Screening Date 8-May-2009 Docket No. 2009-0714-MSW-E PCW

Respondent Daniel L. Mauldin d/b/a Travis Equipment Company Policy Revision 2 (September 2002)

Case ID No. 37628 PCW Revision October 30, 2008

Reg. Ent. Reference No. RN10277778

Media [Statute] Municipal Solid Waste

Enf. Coordinator Judy Kluge

Violation Number 3 Rule Cite(s) 30 Tex. Admin. Code §§ 37.921 and 328.5(d)

Violation Description Failed to obtain financial assurance for closure of the Facility, as documented during an investigation conducted on February 27, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (10%).

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 70

Table with frequency options: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply 0.0% Reduction \$0

Table with categories: Extraordinary, Ordinary, N/A (marked 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 \$999 Violation Final Penalty Total \$1,633

This violation Final Assessed Penalty (adjusted for limits) \$1,633

Economic Benefit Worksheet

Respondent Daniel L. Mauldin d/b/a Travis Equipment Company
Case ID No. 37628
Reg. Ent. Reference No. RN10277778
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				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

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]	\$951	27-Feb-2008	27-Feb-2009	1.00	\$48	\$951	\$999
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to obtain and maintain financial assurance. The date required is one year prior to the investigation and the final date is the investigation date.

Approx. Cost of Compliance \$951

TOTAL \$999

Compliance History Report

Customer/Respondent/Owner-Operator: CN602798993 Mauldin, Daniel L. Classification: AVERAGE Rating: 20.00
 Regulated Entity: RN102777778 TRAVIS EQUIPMENT COMPANY Classification: AVERAGE Site Rating: 20.00
 ID Number(s):
 Location: 3876 E MAIN ST, MIDLOTHIAN, TX, 76065
 TCEQ Region: REGION 04 - DFW METROPLEX
 Date Compliance History Prepared: May 08, 2009
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: May 08, 2004 to May 08, 2009
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Ross Fife Phone: 512-239-2541

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? Yes
3. If Yes, who is the current owner/operator? OWNOPR Travis Equipment Company
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR D&Y, INC.
5. When did the change(s) in owner or operator occur? 03/08/2005
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.
 Effective Date: 05/09/2005 ADMINORDER 2003-0241-AIR-E
 Classification: Moderate
 Citation: 30 TAC Chapter 111, SubChapter B 111.201
 5C THC Chapter 382, SubChapter A 382.085(b)
 Description: Failure to comply with the outdoor burning rules on 3 separate occasions.
- 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 | 07/15/2004 | (262375) |
| 2 | 05/17/2006 | (461284) |
| 3 | 11/22/2006 | (531634) |
| 4 | 04/27/2009 | (736916) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|--|----------|--------------------------|
| Date: | 11/27/2006 | (531634) | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 328, SubChapter A 328.5(b) | | |
| Description: | Failure to register or provide other notification documentation, including Closure Cost Estimate and Financial Assurance, to the TCEQ for on-site wood/brush chipping and recycling. | | |
| | | | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 328, SubChapter A 328.5(f)(1) | | |
| Description: | Failure to maintain records to demonstrate compliance with the Limitations on Storage of Recyclable Materials in 328.4. | | |
| | | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 328, SubChapter A 328.5(e) | | |
| Description: | Failure to compile and maintain a fire prevention and suppression plan for MSW recycling activities at site. | | |
- 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
DANIEL L. MAULDIN D/B/A TRAVIS
EQUIPMENT COMPANY;
RN102777778**

**§
§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-0714-MSW-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties (the “Agreed Order”), resolving an enforcement action regarding Daniel L. Mauldin d/b/a Travis Equipment Company (“Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Mark McPherson of McPherson Law Firm, P.C., appear before the Commission and together stipulate that:

1. Respondent owns and operates a wood mulching and compost facility located at 3876 East Highway 287 (municipally referred to as 3876 East Main Street), in Midlothian, Ellis County, Texas (the “Facility”). The Facility involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.056 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Commission and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission’s jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
5. An administrative penalty in the amount of four thousand eight hundred ninety-nine dollars (\$4,899.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid two hundred eleven dollars (\$211.00) of the administrative penalty. The remaining amount of four thousand six hundred eighty-eight dollars (\$4,688.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments as follows: twenty-four (24) monthly payments of one hundred dollars (\$100.00) each, followed by eleven (11) monthly payments of two hundred eight dollars (\$208.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the

due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. The Executive Director recognizes that on or about November 24, 2009, Respondent submitted a proposed closure plan to TCEQ documenting that as of August 12, 2009, measurements of total wood mulching and compost materials at the Facility totaled 15,049 cubic yards.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During an investigation conducted on February 27, 2009, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent violated:
 - a. 30 TEX. ADMIN. CODE § 328.5(b), by failing to properly notify the Executive Director of recycling operations for materials generated at municipal and industrial facilities. Specifically, Respondent stored an estimated 28,000 cubic yards of wood waste and had been conducting a mulching operation without submitting an accurate Notice of Intent.
 - b. 30 TEX. ADMIN. CODE § 328.5(f)(1), by failing to maintain records pertaining to recyclable materials. Specifically, records of receipt and shipment of recyclable materials were not available for review.
 - c. 30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d), by failing to obtain financial assurance for closure of the Facility.

2. Respondent received notice of the violations on or about May 3, 2009.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations not addressed in this Agreed Order. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Daniel L. Mauldin d/b/a Travis Equipment Company, Docket No. 2009-0714-MSW-E" to:

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

2. Respondent shall undertake the following technical requirements:
 - a. Either:
 - i. Immediately upon the effective date of this Agreed Order, Respondent shall:
 - A. Cease accepting any recyclable material at the Facility until properly authorized, in accordance with 30 TEX. ADMIN. CODE §§ 335.6(a) and 328.5(b); and
 - B. Begin maintaining records pertaining to recyclable materials, in accordance with 30 TEX. ADMIN. CODE § 328.5(f); and
 - ii. Within 60 days after the effective date of this Agreed Order, Respondent shall:
 - A. Submit a notice of intent to operate a recycling facility, in accordance with 30 TEX. ADMIN. CODE § 328.5(b), to:

Municipal Solid Waste Permits Section, MC 124
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - B. Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 37.921, 328.5(d) and 328.5(f)(3) to:

Financial Assurance Team, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Or, in lieu of Ordering Provision Nos. 2.a.i through 2.a.ii.B, above, within 60 days after the effective date of this Agreed Order, Respondent shall remove all municipal solid waste and recyclable materials and dispose of them at an authorized facility.
- c. Within 75 days after the effective date of this Agreed Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with either Ordering Provision Nos. 2.a. through 2.a.ii.B. or Ordering Provision No. 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 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.”

The certification 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:

Mr. Sam Barrett, Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. All relief not expressly granted in this Agreed Order is denied.
4. The provisions of this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

5. If Respondent fails to comply with any of the Ordering Provisions in this Agreed 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 Agreed 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.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed 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.
7. This Agreed Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process that the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Gordon Purdie

For the Executive Director

11/9/2010

Date

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

I also understand that failure to comply with any of the Ordering Provisions in this Agreed Order, including failure to timely pay the penalty amount, may result in:

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

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

Daniel L. Mauldin

Signature

9-17-10

Date

Daniel L. Mauldin

Name (Printed or typed)

Authorized representative of

Daniel L. Mauldin d/b/a Travis
Equipment Company

Owner, Travis Equipment Company

Title