

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2008-1870-MSW-E TCEQ ID RN105376669 CASE NO. 36880
RESPONDENT NAME: FRANK ROBERTS AND LINDA ROBERTS

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 VIOLATION(S) OCCURRED: 20278 Farm-to-Market 56, Kopperl, Bosque County

TYPE OF OPERATION: Unauthorized municipal solid waste disposal site

SMALL BUSINESS: N/A

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 the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The Texas Register comment period expired March 1, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-3400
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Clinton Sims, Waste Enforcement Section, MC 169, (512) 239-6933

TCEQ Regional Contact: Mr. Frank Burlison, Waco Regional Office, MC R-9. (254) 761-3001

Respondents: Mr. Frank Roberts and Mrs. Linda Roberts, 20278 Farm-to-Market 56, Kopperl, Texas 76652

Respondents' Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 2, 2008</p> <p>Date of NOE Relating to this Case: October 11, 2008</p> <p>Background Facts: The EDPRP was filed on May 20, 2009. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on November 24, 2009.</p> <p>Current Compliance Status: The Respondents have not yet submitted documentation to certify compliance with the technical requirements.</p> <p>MSW: Failed to prevent the unauthorized disposal of municipal solid waste [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p>Total Assessed: \$2,625</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 Paid/Due to General Revenue: \$105/\$2,520</p> <p>The Respondents paid \$105 of the administrative penalty. The remaining amount of \$2,520 shall be payable in 24 monthly payments of \$105 each.</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 (Both Respondents): <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondents shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease accepting and/or processing any waste at this Site. 2. Within 60 days, remove all waste from the Site and dispose of it in an authorized facility. 3. 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	28-Oct-2008	Screening	4-Dec-2008	EPA Due	
	PCW	16-Apr-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Frank Roberts and Linda Fay Hall Roberts
Reg. Ent. Ref. No.	RN105376669
Facility/Site Region	9-Waco
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	36880	No. of Violations	1
Docket No.	2008-1870-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Michael Graham
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$125
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Notes	There was one NOV for the 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	\$285	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$6,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,625
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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	\$2,625
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,625
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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	\$2,625
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Screening Date 4-Dec-2008

Docket No. 2008-1870-MSW-E

PCW

Respondent Frank Roberts and Linda Fay Hall Roberts

Policy Revision 2 (September 2002)

Case ID No. 36880

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105376669

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Graham

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 judgments 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

There was one NOV for the same or similar violations.

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

Screening Date 4-Dec-2008 **Docket No.** 2008-1870-MSW-E **PCW**
Respondent Frank Roberts and Linda Fay Hall Roberts *Policy Revision 2 (September 2002)*
Case ID No. 36880 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105376669
Media [Statute] Municipal Solid Waste
Enf. Coordinator Michael Graham

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. Specifically the Respondent allowed approximately 2000 scrap tires (approximately 200 cubic yards) and approximately 100 cubic yards of household waste to be disposed of at the Site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual				x
Potential				Percent 25%	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 41 Number of violation days

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

Violation Base Penalty \$2,500

One quarterly event is recommended from the October 2, 2008 record review date to the November 11, 2008 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	0.0%	Reduction
	Before NOV	NOV to EUP/PP/ Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$2,500

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

Estimated EB Amount \$285 **Violation Final Penalty Total** \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent Frank Roberts and Linda Fay Hall Roberts
Case ID No. 36880
Reg. Ent. Reference No. RN105376669
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	\$6,500	2-Oct-2008	18-Aug-2009	0.88	\$285	n/a	\$285
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The approximate cost to dispose of 2000 passenger car or light truck tires including a \$1000 handling fee and the cost to dispose of approximately 100 cubic yards of various municipal solid waste. The date required is the record review date and the final date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$6,500

TOTAL

\$285

Compliance History Report

Customer/Respondent/Owner-Operator: CN603269341 ROBERTS, FRANK Classification: AVERAGE Rating: 3.00
Regulated Entity: RN105376669 20278 FM 56 Classification: AVERAGE Site Rating: 3.00

ID Number(s):

Location: 20278 FM 56, KOPPERL, TX, 76652

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: January 06, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 06, 2004 to January 06, 2009

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

Name: Michael Graham Phone: 806-796-7635

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 09/02/2008 (701395)
 - 2 10/24/2008 (704400)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 01/25/2008 (610017)

Self NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)

Description: Failure to obtain written authorization from the TCEQ prior to the disposal of municipal solid waste.
 - 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

CH 1

Compliance History Report

Customer/Respondent/Owner-Operator: CN603582339 Linda Faye Hall Roberts Classification: Rating:
Regulated Entity: RN105376669 20278 FM 56 Classification: Site Rating:
ID Number(s):
Location: 20278 FM 56, KOPPERL, TX, 76652
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: November 13, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 13, 2004 to November 13, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Clinton Sims Phone: 239 - 6933

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/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

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 09/02/2008 (701395)
 - 2 10/24/2008 (704400)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 01/25/2008 (610017)

Self NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)

Description: Failure to obtain written authorization from the TCEQ prior to the disposal of municipal solid waste.
 - 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
FRANK ROBERTS AND
LINDA ROBERTS;
RN105376669**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2008-1870-MSW-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Frank Roberts and Linda Roberts (“Mr. and Ms. Roberts”) under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. and Ms. Roberts appear before the Commission and together stipulate that:

1. Mr. Roberts owns and operates and Ms. Roberts owns an unauthorized municipal solid waste disposal site located at 20278 Farm-to-Market 56, Kopperl, Bosque County, Texas (the “Site”).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 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 Mr. and Ms. Roberts agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. and Ms. Roberts are 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 Mr. and Ms. Roberts of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
5. An administrative penalty in the amount of two thousand six hundred twenty-five dollars (\$2,625.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Mr. and Ms. Roberts paid one hundred five dollars (\$105.00) of the

administrative penalty. The remaining amount of two thousand five hundred twenty dollars (\$2,520.00) of the administrative penalty shall be payable in twenty-four (24) monthly payments of one hundred five dollars (\$105.00) 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 Mr. and Ms. Roberts fail 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, Mr. and Ms. Roberts's failure to meet the payment schedule of this Agreed Order constitutes the failure by Mr. and Ms. Roberts 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 Mr. and Ms. Roberts agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. 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 Mr. and Ms. Roberts have not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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 a record review conducted on October 2, 2008, a TCEQ Waco Regional Office investigator documented that Mr. and Ms. Roberts violated 30 TEX. ADMIN. CODE § 330.15(c) by failing to prevent the unauthorized disposal of municipal solid waste. Specifically, Mr. and Ms. Roberts allowed approximately 2,000 scrap tires (approximately 200 cubic yards) and approximately 100 cubic yards of household waste to be disposed of at the Site.
2. Mr. and Ms. Roberts received notice of the violation on or about October 16, 2008.

III. DENIALS

Mr. and Ms. Roberts generally deny each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. and Ms. Roberts pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and Mr. and Ms. Roberts’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 which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: Frank Roberts and Linda Roberts, Docket No. 2008-1870-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. Mr. and Ms. Roberts shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Mr. and Ms. Roberts shall cease accepting and/or processing any waste at this Site;
 - b. Within 60 days after the effective date of this Agreed Order, Mr. and Ms. Roberts shall remove all waste from the Site and dispose of it at an authorized facility; and
 - c. Within 75 days after the effective date of this Agreed Order, Mr. and Ms. Roberts shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Mr. and Ms. Roberts shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. to:

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

and

Mr. Frank Burleson, Waste Section Manager
Texas Commission on Environmental Quality
Waco Regional Office
6801 Sanger Ave., Ste. 2500
Waco, TX 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. and Ms. Roberts. Mr. and Ms. Roberts are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If Mr. and Ms. Roberts fail 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, Mr. and Ms. Roberts's failure to comply is not a violation of this Agreed Order. Mr. and Ms. Roberts shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. and Ms. Roberts shall notify the Executive Director within seven days after Mr. and Ms. Roberts become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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 Mr. and Ms. Roberts shall be made in writing to the Executive Director. Extensions are not effective until Mr. and Ms. Roberts receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. and Ms. Roberts 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.

Frank Roberts and Linda Roberts

Docket No. 2008-1870-MSW-E

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7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. 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 the Agreed Order to Mr. and Ms. Roberts, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. and Ms. Roberts, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Frank Roberts and Linda Roberts
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]

For the Executive Director

2/3/2010

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

- A negative impact on Mr. and Ms. Roberts's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. and Ms. Roberts;
- 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 against Mr. and Ms. Roberts;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. and Ms. Roberts; and
- TCEQ seeking other relief as authorized by law.

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

[Signature]
Signature

11-24-09

Date

FRANK ROBERTS
Frank Roberts

Title

[Signature]
Signature

11-23-09

Date

Linda Roberts
Linda Roberts

Title