

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1725-MLM-E TCEQ ID: RN105696868 CASE NO.: 38524

RESPONDENT NAME: Clarence Schley

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 checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 603 South Farm-to-Market Road 1291, Fayetteville, Fayette County</p> <p>TYPE OF OPERATION: Agricultural livestock operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on August 30, 2009, alleging that livestock carcasses on an adjacent property were creating a strong odor problem. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 22, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0577; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Clarence B. Schley, 603 South Farm-to-Market Road 1291, Fayetteville, Texas 78940 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: August 30, 2009</p> <p>Date of Investigation Relating to this Case: September 16, 2009</p> <p>Date of NOV/NOE Relating to this Case: September 25, 2009 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WASTE</p> <p>1) Failure to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 44 cubic yards of MSW consisting of construction demolition debris and household trash were disposed of at the Site [30 TEX. ADMIN. CODE § 330.15(c)].</p> <p>2) Failure to prevent the disposal of industrial solid waste in such a manner as to cause creation of a nuisance. Specifically, the Respondent did not properly dispose of six livestock carcasses. The carcasses were lying in and around an earthen pit and emanating strong odors [30 TEX. ADMIN. CODE § 335.4(2)].</p>	<p>Total Assessed: \$2,100</p> <p>Total Deferred: \$420 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$140 (remaining \$1,540 due in 11 monthly payments of \$140 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 <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order:</p> <p>i. Cease the disposal of additional cattle carcasses in a manner that creates a nuisance; and</p> <p>ii. Cease any additional MSW disposal at the Site;</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Properly dispose of all cattle carcasses at the Site in a manner that will not create a nuisance and/or endanger human health, safety and the environment; and</p> <p>ii. Remove all MSW from the Site and dispose at an authorized facility.</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a.i. through b.ii.</p>

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2009

TCEQ

DATES	Assigned	5-Oct-2009	Screening	6-Oct-2009	EPA Due	
	PCW	20-Oct-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Clarence Schley
Reg. Ent. Ref. No.	RN105696868
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38524	No. of Violations	2
Docket No.	2009-1725-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Industrial and Hazardous Waste	Enf. Coordinator	Rajesh Acharya
		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	\$2,000
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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	\$100
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Notes: Enhancement for one NOV with same or similar violations.

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	\$122
Approx. Cost of Compliance	\$3,691

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,100
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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:

Final Penalty Amount	\$2,100
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,100
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DEFERRAL	20.0% Reduction	Adjustment	-\$420
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$1,680
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Screening Date 6-Oct-2009

Docket No. 2009-1725-MLM-E

PCW

Respondent Clarence Schley

Policy Revision 2 (September 2002)

Case ID No. 38524

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105696868

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rajesh Acharya

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%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 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 6-Oct-2009

Docket No. 2009-1725-MLM-E

PCW

Respondent Clarence Schley

Policy Revision 2 (September 2002)

Case ID No. 38524

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105696868

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rajesh Acharya

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 ("MSW"). Specifically, approximately 44 cubic yards of MSW consisting of construction demolition debris and household trash were disposed of at the Site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

20 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 September 16, 2009 investigation date to the October 6, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Extraordinary

Ordinary

N/A

Notes

Before NOV NOV to EDRP/ Settlement Offer

X (mark with x)

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 \$22

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent Clarence Schley
Case ID No. 38524
Reg. Ent. Reference No. RN105696868
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
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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	\$891	16-Sep-2009	16-Mar-2010	0.50	\$22	n/a	\$22
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to properly dispose of approximately 44 cubic yards of waste at an authorized landfill. Date Required is the investigation date. 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	\$891	TOTAL	\$22
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Screening Date 8-Oct-2009

Docket No. 2009-1725-MLM-E

PCW

Respondent Clarence Schley

Policy Revision 2 (September 2002)

Case ID No. 38524

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN105696868

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rajesh Acharya

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 335.4(2)

Violation Description

Failed to prevent the disposal of industrial solid waste in such a manner as to cause creation of a nuisance. Specifically, the Respondent did not properly dispose of six livestock carcasses. The carcasses were lying in and around an earthen pit and emanating strong odors.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Harm		
	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 \$9,000

\$1,000

Violation Events

Number of Violation Events 1

20 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 September 16, 2009 investigation date to the October 6, 2009 screening date.

Good Faith Efforts to Comply

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

Notes

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Estimated EB Amount \$99

Statutory Limit Test

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent Clarence Schley
Case ID No. 38524
Reg. Ent. Reference No. RN105696868
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
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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	\$3,000	16-Sep-2009	18-May-2010	0.66	\$99	n/a	\$99
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of the cattle carcasses at \$500 per carcass. Date Required is the investigation date.
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

\$3,000

TOTAL

\$99

Compliance History Report

Customer/Respondent/Owner-Operator: CN603453937 SCHLEY, CLARENCE Classification: AVERAGE Rating: 6.00
Regulated Entity: RN105696868 603 S FM 1291 FAYETTEVILLE TX Classification: AVERAGE Site Rating: 6.00
78940
ID Number(s):
Location: 603 S FM RD 1291, FAYETTEVILLE, TX, 78940
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: October 15, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 15, 2004 to October 15, 2009

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

Name: Rajesh Acharya Phone: (512) 239-0577

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 judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 03/24/2009 (736935)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.4(2)
Description: Failure to properly dispose of industrial solid waste.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)(2)
Description: Failure to properly dispose 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
CLARENCE SCHLEY
RN105696868

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§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2009-1725-MLM-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Clarence Schley ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates an agricultural livestock operation at 603 South Farm-to-Market Road 1291 in Fayetteville, Fayette County, Texas (the "Site").
2. The Site involves or involved the management of municipal solid waste ("MSW") and hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 30, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand One Hundred Dollars (\$2,100) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Forty Dollars (\$140) of the administrative penalty and Four Hundred Twenty Dollars (\$420) is deferred contingent upon the Respondent's timely and

satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of One Thousand Five Hundred Forty Dollars (\$1,540) of the administrative penalty shall be payable in 11 monthly payments of One Hundred Forty Dollars (\$140) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. 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.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
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 the 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

As owner and operator of the Site, the Respondent is alleged to have:

1. Failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c), as documented during an investigation conducted on September 16, 2009. Specifically, approximately 44 cubic yards of MSW consisting of construction demolition debris and household trash were disposed of at the Site.

2. Failed to prevent the disposal of industrial solid waste in such a manner as to cause creation of a nuisance, in violation of 30 TEX. ADMIN. CODE § 335.4(2), as documented during an investigation conducted on September 16, 2009. Specifically, the Respondent did not properly dispose of six livestock carcasses. The carcasses were lying in and around an earthen pit and emanating strong odors.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the 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 requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Clarence Schley, Docket No. 2009-1725-MLM-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order:
 - i. Cease the disposal of additional cattle carcasses in a manner that creates a nuisance; and
 - ii. Cease any additional MSW disposal at the Site;
 - b. Within 30 days after the effective date of this Agreed Order:
 - i. Properly dispose of all cattle carcasses at the Site in a manner that will not create a nuisance and/or endanger human health, safety and the environment; and
 - ii. Remove all MSW from the Site and dispose at an authorized facility.
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.b.ii. 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
2800 S IH 35, Suite 100
Austin, Texas 78704-5712

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is 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 the 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives 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 the 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.

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 under this Agreed Order.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the 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



For the Executive Director

2/25/2010
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity 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 the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- 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, any falsification of any compliance documents may result in criminal prosecution.



Signature

Dec. 29, 2009
Date

Name (Printed or typed)
Authorized Representative of
Clarence Schley

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.