

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1439-MSW-E TCEQ ID RN104799101 CASE NO. 28006
RESPONDENT NAME: JAIME GARCIA

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION OCCURRED: 561 County Road 410, Falfurrias, Jim Wells County

TYPE OF OPERATION: Unauthorized 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) 239-0635
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. Brad Genzer, Corpus Christi Regional Office, MC R-14, (361) 825-3106
Respondent: Mr. Jaime Garcia, 291 Windmill Ranch Road, Spring Branch, Texas 78070-6133
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" 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: July 30, 2009</p> <p>Date of NOE Relating to this Case: August 13, 2009</p> <p>Background Facts: The EDPRP was filed on November 5, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed". The first class mail has not been returned. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance</p> <p>MSW: Failed to prevent the unauthorized disposal of municipal solid waste and failed to ensure that all the unauthorized waste at the Site was removed and properly disposed of at an authorized facility [30 TEX. ADMIN. CODE § 330.15(c) and TCEQ Agreed Order, Docket No. 2006-0077-MSW-E, Ordering Provisions Nos. 2.a. through 2.c.].</p>	<p>Total Assessed: \$7,800</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$7,800</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately cease disposing of any additional waste at the Site. 2. Within 30 days, remove all municipal solid waste and dispose of the waste at an authorized facility. 3. Within 45 days, submit written certification demonstrating compliance with Ordering Provision Nos. 1 and 2.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	24-Aug-2009			
	PCW	4-Sep-2009	Screening	28-Aug-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Jaime Garcia				
Reg. Ent. Ref. No.	RN104799101				
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	28006	No. of Violations	1		
Docket No.	2009-1439-MSW-E	Order Type	Findings		
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Clinton Sims		
		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	\$6,000
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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	\$1,800
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Notes: Enhancement due to one order with a denial of liability and poor performer classification.

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: \$196
 Approx. Cost of Compliance: \$1,980
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,800
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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	\$7,800
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,800
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$7,800
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Screening Date 28-Aug-2009

Docket No. 2009-1439-MSW-E

PCW

Respondent Jaime Garcia

Policy Revision 2 (September 2002)

Case ID No. 28006

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104799101

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

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)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement due to one order with a denial of liability and poor performer classification.

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

Screening Date 28-Aug-2009 **Docket No.** 2009-1439-MSW-E **PCW**
Respondent Jaime Garcia *Policy Revision 2 (September 2002)*
Case ID No. 28006 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN104799101
Media [Statute] Municipal Solid Waste
Enf. Coordinator Clinton Sims

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 330.15(c) and TCEQ Agreed Order Docket No. 2006-0077-MSW-E, Ordering Provision Nos. 2.a. through 2.c.

Violation Description Failed to prevent the unauthorized disposal of municipal solid waste. Specifically, the Respondent demolished a building and arranged for the transport and disposal of the debris at an unauthorized site. In addition, the Respondent failed to comply with TCEQ Agreed Order Docket No. 2006-0077-MSW-E, Ordering Provision Nos. 2.a. through 2.c. Specifically, the Respondent failed to ensure that all the unauthorized waste at the Site was removed and properly disposed of at an authorized facility. Approximately 160 cubic yards of waste remains at the Site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			x	10%
	Potential				

>> 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 6 463 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$6,000

Six quarterly events are recommended from the May 22, 2008 order effective date to the August 28, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

	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 \$6,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$196

Violation Final Penalty Total \$7,800

This violation Final Assessed Penalty (adjusted for limits) \$7,800

Economic Benefit Worksheet

Respondent Jaime Garcia
Case ID No. 28006
Reg. Ent. Reference No. RN104799101
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	\$1,980	22-May-2008	14-May-2010	1.98	\$196	n/a	\$196
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and dispose of the waste at an authorized facility. The Date Required is the order effective date and the Final Date is 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 \$1,980

TOTAL \$196

Compliance History Report

Customer/Respondent/Owner-Operator: CN602872210 Garcia, Jaime - Alameda Bldg. Classification: POOR Rating: 55.00
Regulated Entity: RN104799101 GARCIA, JAIME ALAMEDA BLDG Classification: POOR Site Rating: 80.00
ID Number(s): MUNICIPAL SOLID WASTE NON ID NUMBER UNA455140052
Location: N COL ROWE BLVD MCALLEN TX 78504
TCEQ Region: REGION 15 - HARLINGEN
Date Compliance History Prepared: October 14, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 14, 2004 to October 14, 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
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.
Effective Date: 05/22/2008 ADMINORDER 2006-0077-MSW-E
Classification: Major
Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
Description: Failure to prevent the disposal of municipal solid waste at a site not authorized by the Commission to accept the waste.
- 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.)
N/A
- 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
JAIME GARCIA;
RN104799101**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-1439-MSW-E**

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

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

FINDINGS OF FACT

1. Mr. Garcia owned a vacant building that was demolished, previously located at the intersection of Highway 281 and County Road 285, Falfurrias, Brooks County, Texas. Mr. Garcia disposed of the demolition debris at an unauthorized site located at 561 County Road 410, Falfurrias, Jim Wells County, Texas (the “Site”).
2. The Site involves the management and/or disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on July 30, 2009, a TCEQ Corpus Christi Regional Office investigator documented that Mr. Garcia failed to prevent the unauthorized disposal of municipal solid waste. Specifically, Mr. Garcia demolished a building and arranged for the transport and disposal of the debris at an unauthorized site. In addition, Mr. Garcia failed to comply with TCEQ Agreed Order, Docket No. 2006-0077-MSW-E, Ordering Provisions Nos. 2.a. through 2.c., by failing to ensure that all the unauthorized waste at the Site was removed and properly disposed of at an authorized facility. Approximately 160 cubic yards of waste remain at the Site.
4. Mr. Garcia received notice of the violations on or about August 18, 2009.

5. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jaime Garcia” (the “EDPRP”) in the TCEQ Chief Clerk’s office on November 5, 2009.
6. By letter dated November 5, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Garcia with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Garcia received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Garcia received notice of the EDPRP, provided by the Executive Director. Mr. Garcia failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Garcia is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Garcia failed to prevent the unauthorized disposal of municipal solid waste and failed to ensure that all the unauthorized waste at the Site was removed and properly disposed of at an authorized facility, in violation of 30 TEX. ADMIN. CODE § 330.15(c) and TCEQ Agreed Order, Docket No. 2006-0077-MSW-E, Ordering Provisions Nos. 2.a. through 2.c.
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Garcia with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Mr. Garcia failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Garcia and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Garcia for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission’s jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of seven thousand eight hundred dollars (\$7,800.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Garcia is assessed an administrative penalty in the amount of seven thousand eight hundred dollars (\$7,800.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Garcia's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Jaime Garcia; Docket No. 2009-1439-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. Garcia shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Garcia shall cease disposing of any additional waste at the Site;
 - b. Within 30 days after the effective date of this Order, Mr. Garcia shall remove all municipal solid waste and dispose of the waste at an authorized facility; and
 - c. Within 45 days after the effective date of this Order, Mr. Garcia 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. Garcia 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

with a copy to:

Mr. Brad Genzer, Waste Section Manager
Texas Commission on Environmental Quality
Corpus Christi Regional Office
NRC Bldg., Ste. 1200
6300 Ocean Drive, Unite 5839
Corpus Christi, Texas 78412-5839.

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Garcia. Mr. Garcia is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Mr. Garcia fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Garcia's failure to comply is not a violation of this Order. Mr. Garcia shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Garcia shall notify the Executive Director within seven days after Mr. Garcia becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Garcia shall be made in writing to the Executive Director. Extensions are not effective until Mr. Garcia receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings without notice to Mr. Garcia if the Executive Director determines that Mr. Garcia has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Jaime Garcia
Docket No. 2009-1439-MSW-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Steven M. Fishburn. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jaime Garcia” (the “EDPRP”) was filed with the Office of the Chief Clerk on November 5, 2009.

The EDPRP was mailed to Mr. Garcia at his last known address on November 5, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Garcia received notice of the EDPRP.

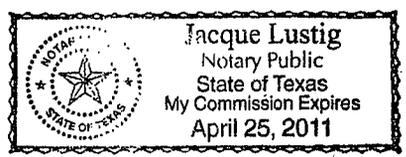
More than 20 days have elapsed since Mr. Garcia received notice of the EDPRP. Mr. Garcia failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”

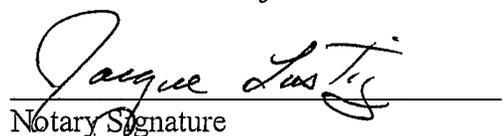


Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 6th day of January, A.D., 2010.





Notary Signature