

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-1457-SLG-E **TCEQ ID:** RN103163507 **CASE NO.:** 38313
RESPONDENT NAME: City of Big Spring

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 AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Big Spring, 310 Nolan Street, Big Spring, Howard County</p> <p>TYPE OF OPERATION: Sludge transporting operation</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 12, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Sharon Blue, SEP Coordinator, Litigation Division, MC 175, (512) 239-2223 TCEQ Enforcement Coordinator: Ms. Carlie Konkol, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-0735; Ms. Laurie Baves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Todd Darden, Director of Public Works, City of Big Spring, 310 Nolan Street, Big Spring, Texas 79720 The Honorable Russ McEwen, Mayor, City of Big Spring, 310 Nolan Street, Big Spring, Texas 79720 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 type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 30, 2009</p> <p>Date of NOV/NOE Relating to this Case: August 21, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to operate with a valid Sludge Transporter Registration. Specifically, the Respondent has been transporting sludge since their registration expired August 31, 2001 [30 TEX. ADMIN. CODE § 312.142(a)].</p> <p>2) Failure to submit an Annual Summary Report ("ASR") for Transporters of Municipal Sludges and Similar Wastes by July 1, 2001, for the reporting period June 1, 2000 to May 31, 2001 [30 TEX. ADMIN. CODE § 312.145(b)(4)].</p>	<p>Total Assessed: \$7,290</p> <p>Total Deferred: \$1,458 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$5,832</p> <p>Total Paid (Due) to General Revenue: \$0</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. On August 25, 2009, received their Sludge Transporting Registration; and</p> <p>b. On September 18, 2009, submitted the ASR for the reporting period June 1, 2000 to May 31, 2001.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SBP). (See SEP Attachment A)</p>

Additional ID No(s): SLGTR/22258/CO

Attachment A
Docket Number: 2009-1457-SLG-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Big Spring
Penalty Amount: Five Thousand Eight Hundred Thirty-Two Dollars (\$5,832)
SEP Offset Amount: Five Thousand Eight Hundred Thirty-Two Dollars (\$5,832)
Type of SEP: Custom (with pre-approved concept)
Location of SEP: Howard County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to perform a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall perform one or more cleanups of unauthorized trash and tire dumpsites in Howard County. The number of sites to be cleaned will be dependent upon the cost to clean each site. The Respondent shall spend at least the SEP Offset Amount and shall complete cleanup of at least one site. The Respondent shall ensure that it recycles, where possible, recyclable items removed from the sites. Eligible sites will be those where a responsible party cannot be found or is unable to clean the site and where reasonable efforts have been made to prevent the dumping. The Respondent shall post signs or implement other measures to ensure that the property owner implements measures to prevent future occurrences of illegal dumping. The Respondent shall ensure that cleanup areas lacking vegetation after completion of the cleanup shall be planted with native plants or vegetation to prevent erosion and resulting siltation.

The Respondent shall receive SEP credit for supplies, disposal fees, public announcement of the event(s), use of equipment, and for hourly wages of laborers (where expenditures are sufficiently documented through supporting documentation) necessary to perform the project. The Respondent will not receive credit for gratuities or inducements for volunteers and will not receive credit for its administrative costs. The Respondent will receive SEP Offset credit only for the direct cost of implementing the project. The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations.

The Respondent shall ensure that the cleanups:

- occur during daylight hours
- are at sites that meet TCEQ eligibility criteria as stated above
- are conducted at properties with authorization and consent of the property owner(s)

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires, debris, and waste that can release chemicals into the soil, water, and air, which will help rid the community of the dangers and health threats associated with non-regulated dumping, and help to prevent the release of harmful chemicals into the air should the illegally dumped tires or other waste material catch fire. The SEP will also provide for recycling of materials, which will help conserve landfill capacity.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent understands that it may be required to spend more than the Offset Amount to complete the project. The Respondent will not receive credit for volunteer labor or equipment or for gratuities and/or inducements for volunteers.

2. Performance Schedule

The Respondent shall complete the project within one year after the effective date of this Agreed Order.

3. Reporting

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a progress report to the TCEQ indicating the progress made to date in scheduling cleanups and setting forth a schedule for achieving completion within the time required above. The Respondent shall thereafter submit progress reports in 90-day increments until the project is completed, as specified below.

The Respondent shall maintain records of the costs of the project. Progress reports will be provided to the SEP Coordinator every 90 days until the projects are completed. The Progress Reports will include:

1. A description of the status of the project;
2. The approximate expenditures in the reporting period; and
3. Other information that may be necessary to provide a narrative description of the steps taken to implement the project.

B. Final Report

Within 60 days after completion of the project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and total of costs incurred with receipts, copies of checks, and any other verifying documentation. Verifying documentation must include copies of actual timesheets for any labor costs and equipment logs showing the hours the Respondent's equipment was utilized on the project. Equipment rates will only be reimbursed at a reasonable and customary rate supported by quotes for rental or use of similar equipment;
 2. Manifests showing proper transport and disposal or recycling of materials;
 3. The quantity of materials collected such as number of tires, gallons of paint, etc;
 4. Before and after photographs of the sites;
 5. A statement of quantifiable environmental benefits; and
 6. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.
- C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following addresses:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Water & Waste Work Leader
TCEQ Midland Regional Office
3300 North A St., Bldg. 4-107
Midland TX 79705-5406

4. Additional Information and Access

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

5. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event that the Respondent does not spend the required SEP Offset Amount on the projects, the Respondent shall remit the remaining balance to TCEQ. The Respondent shall include the docket number of this Agreed Order and a note with the payment, explaining that the payment is for a SEP reimbursement. The check shall be made payable to "Texas Commission on Environmental Quality" and shall be mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

7. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

8. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES

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

RESPONDENT/FACILITY INFORMATION

Respondent	City of Big Spring		
Reg. Ent. Ref. No.	RN103163507		
Facility/Site Region	7-Midland	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	38313	No. of Violations	2
Docket No.	2009-1457-SLG-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Charlie Konkol
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement Subtotals 2, 3, & 7

Notes

Culpability Enhancement Subtotal 4

Notes

Good Faith Effort to Comply Total Adjustments Subtotal 5

Economic Benefit Enhancement* Subtotal 6

Total EB Amounts	\$317	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$750	

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the Indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 4-Sep-2009

Docket No. 2009-1457-SLG-E

PCW

Respondent City of Big Spring

Policy Revision 2 (September 2002)

Case ID No. 38313

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103163507

Media [Statute] Water Quality

Enf. Coordinator Carlie Konkol

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

Adjustment Percentage (Subtotal 2)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No adjustment is recommended due to compliance history.

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

Screening Date 4-Sep-2009

Docket No. 2009-1457-SLG-E

PCW

Respondent City of Big Spring

Policy Revision 2 (September 2002)

Case ID No. 38313

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103163507

Media [Statute] Water Quality

Enf. Coordinator Carlie Konkol

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 312.142(a)

Violation Description

Failed to operate with a valid Sludge Transporter Registration. Specifically, the City of Big Spring has been transporting sludge since their registration expired August 31, 2001.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 8

2916 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

mark only one with an x

Violation Base Penalty \$8,000

Eight annual events are recommended calculated from the registration's expiration date (August 31, 2001) to the date the Respondent returned to compliance (August 25, 2009).

Good Faith Efforts to Comply

10.0% Reduction

\$800

	Before NOV	NOV to EOPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes The Respondent returned to compliance on August 25, 2009.

Violation Subtotal \$7,200

Economic Benefit (EB) for this violation

Estimated EB Amount \$260

Statutory Limit Test

Violation Final Penalty Total \$7,200

This violation Final Assessed Penalty (adjusted for limits) \$7,200

Economic Benefit Worksheet

Respondent City of Big Spring
Case ID No. 38313
Reg. Ent. Reference No. RN103163507
Media Water Quality
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				0.00	\$0	n/a	\$0
Permit Costs	\$650	31-Aug-2001	25-Aug-2009	7.99	\$260	n/a	\$260
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to submit a registration application. The Date Required is the date the registration expired and the Final Date is the 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

\$650

TOTAL

\$260

Screening Date 4-Sep-2009

Docket No. 2009-1457-SLG-E

PCW

Respondent City of Big Spring

Policy Revision 2 (September 2002)

Case ID No. 38313

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103163507

Media [Statute] Water Quality

Enf. Coordinator Carlie Konkol

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 312.145(b)(4)

Violation Description

Failed to timely submit an Annual Summary Report ("ASR") for Transporters of Municipal Sludges and Similar Wastes by July 1, 2001, for the reporting period June 1, 2000 to May 31, 2001.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes

More than 70% of the rule requirement has been met.

Adjustment \$0,900

\$100

Violation Events

Number of Violation Events 1

2937 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$100

One single event is recommended for the ASR not submitted in 2001.

Good Faith Efforts to Comply

	10.0% Reduction	
	Before NOV	NOV to EDFRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

\$10

Notes

The Respondent returned to compliance on September 18, 2009.

Violation Subtotal \$90

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$58

Violation Final Penalty Total \$90

This violation Final Assessed Penalty (adjusted for limits) \$90

Economic Benefit Worksheet

Respondent City of Big Spring
Case ID No. 38313
Reg. Ent. Reference No. RN103163507
Media Water Quality
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)	\$100	1-Jul-2001	18-Sep-2009	8.22	\$3	\$55	\$58
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

Estimated cost to prepare and submit an ASR. Date required was the original due date and the Final date is date the ASR was received.

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

\$58

Compliance History Report

Customer/Respondent/Owner-Operator: CN600668693 City of Big Spring Classification: AVERAGE Rating: 2.06
Regulated Entity: RN103163507 CITY OF BIG SPRING Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s):

Location: 310 NOLAN ST, BIG SPRING, TX, 79720
TCEQ Region: REGION 07 - MIDLAND

Date Compliance History Prepared: August 25, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 25, 2004 to August 25, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Carlie Konkol Phone: (361) 825-3422

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 08/21/2009 (765370)
- 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
CITY OF BIG SPRING
RN103163507**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-1457-SLG-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 the City of Big Spring ("the City") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a sludge transporting operation at 310 Nolan Street in Big Spring, Howard County, Texas (the "Facility").
2. The City involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about August 26, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Thousand Two Hundred Ninety Dollars (\$7,290) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). One Thousand Four Hundred Fifty-Eight Dollars (\$1,458) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order and

Five Thousand Eight Hundred Thirty-Two Dollars (\$5,832) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP"). The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.

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 City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:
 - a. On August 25, 2009, received their Sludge Transporting Registration; and
 - b. On September 18, 2009, submitted the Annual Summary Report ("ASR") for the reporting period June 1, 2000 to May 31, 2001.
10. 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 City has not complied with one or more of the terms or conditions in this Agreed Order.
11. 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.
12. 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 Facility, the City is alleged to have:

1. Failed to operate with a valid Sludge Transporter Registration, in violation of 30 TEX. ADMIN. CODE § 312.142(a), as documented during an investigation conducted on July 30, 2009. Specifically, the City has been transporting sludge since their registration expired August 31, 2001.
2. Failed to submit an ASR for Transporters of Municipal Sludges and Similar Wastes by July 1, 2001, for the reporting period June 1, 2000 to May 31, 2001, in violation of 30 TEX. ADMIN. CODE § 312.145(b)(4), as documented during an investigation conducted on July 30, 2009.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City'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: City of Big Spring, Docket No. 2009-1457-SLG-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. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Five Thousand Eight Hundred Thirty-Two Dollars (\$5,832) of the assessed administrative penalty shall be offset with the condition that the City implements the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. This Agreed Order, issued by the Commission, shall not be admissible against the City 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.
5. 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.
6. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, 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

Date 3/23/2010

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

Date February 3, 2010

Russ McEwen
Name (Printed or typed)
Authorized Representative of
City of Big Spring

Mayor
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.

Attachment A
Docket Number: 2009-1457-SLG-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Big Spring
Penalty Amount: Five Thousand Eight Hundred Thirty-Two Dollars (\$5,832)
SEP Offset Amount: Five Thousand Eight Hundred Thirty-Two Dollars (\$5,832)
Type of SEP: Custom (with pre-approved concept)
Location of SEP: Howard County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to perform a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall perform one or more cleanups of unauthorized trash and tire dumpsites in Howard County. The number of sites to be cleaned will be dependent upon the cost to clean each site. The Respondent shall spend at least the SEP Offset Amount and shall complete cleanup of at least one site. The Respondent shall ensure that it recycles, where possible, recyclable items removed from the sites. Eligible sites will be those where a responsible party cannot be found or is unable to clean the site and where reasonable efforts have been made to prevent the dumping. The Respondent shall post signs or implement other measures to ensure that the property owner implements measures to prevent future occurrences of illegal dumping. The Respondent shall ensure that cleanup areas lacking vegetation after completion of the cleanup shall be planted with native plants or vegetation to prevent erosion and resulting siltation.

The Respondent shall receive SEP credit for supplies, disposal fees, public announcement of the event(s), use of equipment, and for hourly wages of laborers (where expenditures are sufficiently documented through supporting documentation) necessary to perform the project. The Respondent will not receive credit for gratuities or inducements for volunteers and will not receive credit for its administrative costs. The Respondent will receive SEP Offset credit only for the direct cost of implementing the project. The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations.

The Respondent shall ensure that the cleanups:

- occur during daylight hours
- are at sites that meet TCEQ eligibility criteria as stated above
- are conducted at properties with authorization and consent of the property owner(s)

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires, debris, and waste that can release chemicals into the soil, water, and air, which will help rid the community of the dangers and health threats associated with non-regulated dumping, and help to prevent the release of harmful chemicals into the air should the illegally dumped tires or other waste material catch fire. The SEP will also provide for recycling of materials, which will help conserve landfill capacity.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent understands that it may be required to spend more than the Offset Amount to complete the project. The Respondent will not receive credit for volunteer labor or equipment or for gratuities and/or inducements for volunteers.

2. Performance Schedule

The Respondent shall complete the project within one year after the effective date of this Agreed Order.

3. Reporting

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a progress report to the TCEQ indicating the progress made to date in scheduling cleanups and setting forth a schedule for achieving completion within the time required above. The Respondent shall thereafter submit progress reports in 90-day increments until the project is completed, as specified below.

The Respondent shall maintain records of the costs of the project. Progress reports will be provided to the SEP Coordinator every 90 days until the projects are completed. The Progress Reports will include:

1. A description of the status of the project;
2. The approximate expenditures in the reporting period; and
3. Other information that may be necessary to provide a narrative description of the steps taken to implement the project.

B. Final Report

Within 60 days after completion of the project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and total of costs incurred with receipts, copies of checks, and any other verifying documentation. Verifying documentation must include copies of actual timesheets for any labor costs and equipment logs showing the hours the Respondent's equipment was utilized on the project. Equipment rates will only be reimbursed at a reasonable and customary rate supported by quotes for rental or use of similar equipment;
 2. Manifests showing proper transport and disposal or recycling of materials;
 3. The quantity of materials collected such as number of tires, gallons of paint, etc;
 4. Before and after photographs of the sites;
 5. A statement of quantifiable environmental benefits; and
 6. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.
- C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following addresses:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Water & Waste Work Leader
TCEQ Midland Regional Office
3300 North A St., Bldg. 4-107
Midland TX 79705-5406

4. Additional Information and Access

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

5. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event that the Respondent does not spend the required SEP Offset Amount on the projects, the Respondent shall remit the remaining balance to TCEQ. The Respondent shall include the docket number of this Agreed Order and a note with the payment, explaining that the payment is for a SEP reimbursement. The check shall be made payable to "Texas Commission on Environmental Quality" and shall be mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

7. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

8. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.