

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0205-MLM-E TCEQ ID: RN105388854 CASE NO.: 35332
RESPONDENT NAME: R.F. HORKA

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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 checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATIONS OCCURRED: 2204 Highway 96 South, Silsbee, Hardin County

TYPE OF OPERATION: unauthorized municipal solid waste disposal site

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: Six complaints were received, alleging that the Respondent was allowing construction debris and trash to be dumped at the site and burned. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainants have not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired October 26, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Barham Richard, Litigation Division, MC 175, (512) 239-0107
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Ms. Kimberly Morales, Air Enforcement Section, MC R-12, (713) 422-8938

TCEQ Regional Contact: Ms. Heather Ross, Beaumont Regional Office, MC R-10, (409) 898-3838

Respondent: Mr. R.F. Horka, 125 Martin Luther King, Silsbee, Texas 77656

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 checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Dates of Complaints Relating to this Case: November 29 and December 13, 2007; January 7,11,17, and 23, 2008.</p> <p>Dates of Investigation Relating to this Case: November 29, 2007 through January 23, 2008</p> <p>Date of NOE Relating to this Case: January 25, 2008</p> <p>Background Facts: The EDPRP was filed on August 26, 2008. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on August 27, 2009.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>MLM:</p> <ol style="list-style-type: none"> Failed to prevent a nuisance condition (December 2007) [30 TEX. ADMIN. CODE §§ 101.4 and 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to prevent a nuisance condition (January 2008) [30 TEX. ADMIN. CODE §§ 101.4 and 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to prevent the dumping or disposal of municipal solid waste without the written consent of the Commission [30 TEX. ADMIN. CODE § 330.15(c)]. 	<p>Total Assessed: \$8,500</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$275/\$8,225</p> <p>The Respondent paid \$275 of the administrative penalty. The remaining amount of \$8,225 shall be payable in 35 monthly payments of \$235 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>Findings Order Justification: Human health or the environment has been exposed to significant amounts of pollutants which exceed levels that are protective (PCW violation no. 1).</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately: <ol style="list-style-type: none"> Cease all outdoor burning; and Cease disposing of any additional waste at the Site. Within 30 days, remove all of the waste from the Site and dispose of it at an authorized facility. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

TCEQ

DATES	Assigned	28-Jan-2008			
	PCW	24-Sep-2009	Screening	31-Jan-2008	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	R. F. Horka	
Reg. Ent. Ref. No.	RN105388854	
Facility/Site Region	10-Beaumont	Major/Minor Source
		Minor

CASE INFORMATION

Enf./Case ID No.	35332	No. of Violations	3
Docket No.	2008-0205-MLM-E	Order Type	Findings
Media Program(s)	Air	Enf. Coordinator	Kimberly Morales
Multi-Media	Municipal Solid Waste	EC's Team	Enforcement Team 5
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$8,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No change due to average performer classification.

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

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

Total EB Amounts	\$201	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$3,000	<i>*Capped at the Total EB \$ Amount</i>		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$8,500

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,500
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$8,500
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Screening Date 31-Jan-2008

Docket No. 2008-0205-MLM-E

PCW

Respondent R. F. Horka

Policy Revision 2 (September 2002)

Case ID No. 35332

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN105388854

Media [Statute] Air

Enf. Coordinator Kimberly Morales

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

Adjustment Percentage (Subtotal 2) 0%

>> **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 No change due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 31-Jan-2008

Docket No. 2008-0205-MLM-E

PCW

Respondent R. F. Horka

Policy Revision 2 (September 2002)

Case ID No. 35332

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN105388854

Media [Statute] Air

Enf. Coordinator Kimberly Morales

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 101.4 and 111.201, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to prevent a nuisance condition. Specifically, nuisance odor conditions were confirmed on December 13, 2007 from the outdoor burning of shingles and various other municipal solid waste ("MSW"). In addition, the TCEQ investigator experienced nausea and a headache from site conditions on December 13, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual	x			50%	
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants which exceed levels that are protective of human health.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1 Number of violation days 1

daily	x
monthly	
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$5,000

One daily event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent R. F. Horka
Case ID No. 35332
Reg. Ent. Reference No. RN105388854
Media Air
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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The economic benefit for this violation is included in that for Violation No. 3.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date 31-Jan-2008

Docket No. 2008-0205-MLM-E

PCW

Respondent R. F. Horka

Policy Revision 2 (September 2002)

Case ID No. 35332

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN105388854

Media [Statute] Air

Enf. Coordinator Kimberly Morales

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 101.4 and 111.201, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to prevent a nuisance condition. Specifically, nuisance odor conditions were confirmed on January 14, 15, 16, 17, and 18, 2008 from the outdoor burning of shingles and various other MSW.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 5 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One monthly event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent R. F. Horka
Case ID No. 35332
Reg. Ent. Reference No. RN105388854
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The economic benefit for this violation is included in that for Violation No. 3.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date 31-Jan-2008

Docket No. 2008-0205-MLM-E

PCW

Respondent R. F. Horka

Policy Revision 2 (September 2002)

Case ID No. 35332

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN105388854

Media [Statute] Air

Enf. Coordinator Kimberly Morales

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 330.15(c)

Violation Description Failed to prevent the dumping or disposal of municipal solid waste without the written consent of the commission. Specifically, TCEQ investigators documented during investigations on November 29 and December 13, 2007, and January 7, 11, 14 through 18, and 23, 2008 that MSW located on the property and/or generated on the property by the demolition of old buildings was being used to fill in a ravine and slough adjacent to Village Creek.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (10%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and 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 63 Number of violation days

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

Violation Base Penalty \$1,000

One quarterly event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$201

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent R. F. Horka
Case ID No. 35332
Reg. Ent. Reference No. RN105388854
Media Air
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$3,000	29-Nov-2007	31-Mar-2009	1.3	\$201	n/a	\$201
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of properly disposing of MSW located on the property. Date required is the date of the first investigation; final date is the estimated date corrective action will be completed.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$3,000

TOTAL

\$201

Compliance History

Customer/Respondent/Owner-Operator: CN603279480 R. F. Horka Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105388854 R F HORKA Classification: AVERAGE BY Site Rating: 3.01
ID Number(s): DEFAULT
Location: 2204 HIGHWAY 96 S, SILSBEE, TX, 77656 Rating Date: September 01 07 Repeat Violator: NO
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: January 30, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 30, 2003 to January 30, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Aaron T. Houston Phone: (409) 899-8784

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 |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, 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.)
- 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
R. F. HORKA;
RN105388854**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2008-0205-MLM -E**

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding R. F. Horka (“Mr. Horka”) under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE chs. 361 and 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Horka presented this agreement to the Commission.

Mr. Horka understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Mr. Horka agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Mr. Horka.

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

FINDINGS OF FACT

1. Mr. Horka owns real property located at 2204 Highway 96 South, Silsbee, Hardin County, Texas (the “Site”).
2. The Site involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During a series of investigations conducted from November 29, 2007 through January 23, 2008, a TCEQ Beaumont Regional Office investigator documented that Mr. Horka:

- a. Failed to prevent a nuisance condition. Nuisance odor conditions were confirmed on December 13, 2007 from the outdoor burning of shingles and various other municipal solid waste (“MSW”), and the TCEQ investigator experienced nausea and a headache from Site conditions on December 13, 2007.
 - b. Failed to prevent a nuisance condition. Nuisance odors were confirmed on January 14, 15, 16, 17 and 18, 2008 from the outdoor burning of shingles and various other MSW.
 - c. Failed to prevent the dumping or disposal of MSW without the written consent of the Commission. TCEQ investigators documented that MSW located on the property and/or generated on the property by the demolition of old buildings was being used to fill in a ravine and slough adjacent to Village Creek, as documented during investigations on November 29 and December 13, 2007 and January 7, 11, 14, 15, 16, 17, 18 and 23, 2008.
4. Mr. Horka received notice of the violations on or about January 30, 2008.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Mr. Horka is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.002, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the Commission.
2. As evidenced by Findings of Fact Nos. 3.a. and 3.b., Mr. Horka failed to prevent nuisance conditions, in violation of 30 TEX. ADMIN. CODE §§ 101.4 and 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Findings of Fact No. 3.c., Mr. Horka failed to prevent the dumping or disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Horka for violations of state statutes within the Commission’s jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of eight thousand five hundred dollars (\$8,500.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Mr. Horka paid two hundred seventy-five dollars (\$275.00) of the administrative penalty. The remaining amount of eight thousand two hundred twenty-five dollars (\$8,225.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of two hundred thirty-five dollars (\$235.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be remitted not later than 30 days following the due

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

ORDERING PROVISIONS

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

1. It is, therefore, ordered by the TCEQ that Mr. Horka pay an administrative penalty as set forth in Conclusion of Law No. 5, above. The payment of this administrative penalty and Mr. Horka's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: R. F. Horka; Docket No. 2008-0205-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. Mr. Horka shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Mr. Horka shall:
 - i. Cease all outdoor burning, in accordance with 30 TEX. ADMIN. CODE § 111.201.
 - ii. Cease disposing of any additional waste at the Site.
 - b. Within 30 days after the effective date of this Agreed Order, Mr. Horka shall remove all of the MSW from the Site and dispose of it at an authorized facility, in accordance with 30 TEX. ADMIN. CODE ch. 330.
 - c. Within 45 days after the effective date of this Agreed Order, Mr. Horka shall 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., 2.a.ii. and 2.b., above.

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. Horka shall submit copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Heather Ross, Air Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3780 Eastex Freeway
Beaumont, Texas 77703

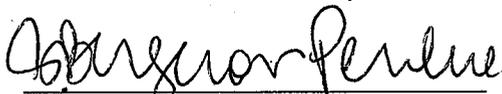
3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Horka. Mr. Horka is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site referenced in this Agreed Order.
4. If Mr. Horka fails to comply with any of the Ordering Provisions 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, Mr. Horka's failure to comply is not a violation of this Agreed Order. Mr. Horka shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Horka shall notify the Executive Director within seven days after Mr. Horka 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 Mr. Horka shall be made in writing to the Executive Director. Extensions are not effective until Mr. Horka receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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. Horka if the Executive Director determines that Mr. Horka has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Horka 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.
9. 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.
10. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of this Agreed Order to Mr. Horka, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Horka, 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

9/23/09

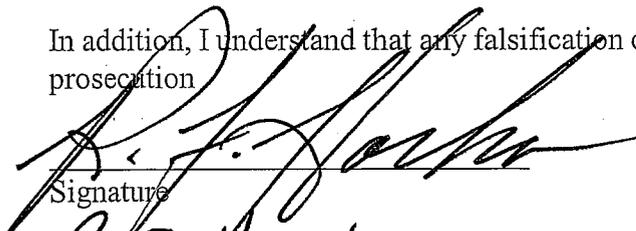
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of R. F. Horka, 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 in this order and/or failure to timely pay the penalty amount, may result in:

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

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



Signature

R. F. Horka

Name (Printed or typed)

R. F. Horka

8/27/09

Date

Title