

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2007-1857-MSW-E TCEQ ID RN101478261 CASE NO. 34964**  
**RESPONDENT NAME: CITY OF CROWELL AND FOARD COUNTY**

<b>ORDER TYPE:</b>		
<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	

<b>CASE TYPE:</b>		
<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 VIOLATIONS OCCURRED:** Highway 7045 and FM 267, Crowell, Foard County

**TYPE OF OPERATION:** Municipal solid waste landfill

**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 May 24, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577

**SEP Coordinator:** Ms. Sharon Blue, Litigation Division, MC 175, (512) 239-2223

**TCEQ Regional Contact:** Mr. Mike Taylor, Abilene Regional Office, MC R-3, (325) 698-6122

**Respondent:** The Honorable Gayle Simpson, Mayor, City of Crowell, P.O. Box 250, Crowell, Texas 79227

**Respondent:** The Honorable Charlie Bell, Foard County Judge, P.O. Box 660, Crowell, Texas 79227

**Respondents' Attorney:** Mr. Clint T. Griffin, Kosub, Griffin & Elkins, LLP, 105 South Main, PO Box 460, Eldorado, Texas 76936

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input checked="" type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 18, 2007</p> <p><b>Date of NOE Relating to this Case:</b> July 12, 2007</p> <p><b>Background Facts:</b> The case was referred to the Litigation Division on January 11, 2008. The EDPRP was filed on July 2, 2008. The EDFARP was filed on December 8, 2008. The Respondents filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on March 11, 2010.</p> <p><b>Current Compliance Status:</b> Respondents have not yet submitted documentation certifying compliance.</p> <p><b>MSW:</b></p> <ol style="list-style-type: none"> <li>Failed to provide financial assurance for the Facility [30 TEX. ADMIN. CODE § 37.111; and TCEQ Agreed Order Docket No. 1998-0666-MSW-E, Ordering Provision No. 5.b.1.A].</li> <li>Failed to maintain records at the Facility showing the daily, intermediate, and final cover within the landfill [30 TEX. ADMIN. CODE §§ 330.165(c), (d), (e), (f), (g), and (h) and 330.219(a)].</li> <li>Failed to have an approved Site Operating Plan ("SOP") for the type 1 landfill [30 TEX. ADMIN. CODE § 330.127].</li> <li>Failed to have grid, buffer, and boundary markers within the type 1 landfill [30 TEX. ADMIN. CODE § 330.143(a)].</li> </ol>	<p><b>Total Assessed:</b> \$11,500</p> <p><b>Total Deferred:</b> \$11,500  <input type="checkbox"/> Expedited Order  <input checked="" type="checkbox"/> SEP Conditional Offset  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Due to General Revenue:</b> \$0</p> <p>The administrative penalty shall be conditionally offset by the completion of a Supplemental Environmental Project (SEP).</p> <p><b>Site Compliance History Classification:</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification (Both Respondents):</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Order Justification:</b> Indifference to legal duty due to violation of an Agreed Order.</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondents shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 30 days: <ol style="list-style-type: none"> <li>Submit documentation that demonstrates acceptable financial assurance for the Facility;</li> <li>Begin maintaining cover application record logs at the Facility;</li> <li>Properly place the buffer zone markers at all corners and between corners at intervals no greater than 300 feet; and</li> <li>Submit an SOP to reflect the current operational status of the landfill; OR</li> <li>In lieu of Ordering Provision Nos. 1.a through 1.d., submit a request to the Executive Director for revocation of Respondents' MSW Permit. The ED shall waive Ordering Provision Nos. 1.a through 1.d. after Respondents fulfill the requirements of the MSW Permit revocation.</li> </ol> </li> <li>Within 180 days, either: <ol style="list-style-type: none"> <li>Submit written certification to demonstrate compliance with Ordering Provisions 1.a through 1.d.; or</li> <li>Submit written certification to demonstrate that all requirements of the MSW Permit revocation have been fulfilled.</li> </ol> </li> <li>Implement and complete the SEP as defined in Attachment A – <i>Supplemental Energy Efficiency Upgrades to Public Buildings and Infrastructure in Foard County</i></li> </ol>

**Attachment A**  
**Docket Number: 2007-1857-MSW-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondents:</b>	CITY OF CROWELL AND FOARD COUNTY
<b>Penalty Amount:</b>	Eleven Thousand Five Hundred Dollars (\$11,500)
<b>SEP Offset Amount:</b>	Eleven Thousand Five Hundred Dollars (\$11,500)
<b>Type of SEP:</b>	Custom
<b>Location of SEP:</b>	Foard County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative Penalty Amount assessed in this Agreed Order on the condition that Respondent Foard County performs the Supplemental Environmental Project (“SEP”) described herein. 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

Foard County shall provide supplemental energy efficiency upgrades to public buildings and infrastructure. Upgrades may include but are not limited to weatherization, energy-reduction modifications such as use of renewable energy sources; building envelope upgrades (cool roofs, exterior shading, optimized insulation and air sealing), installation of high-efficiency lighting fixtures and occupancy sensors for both lighting and HVAC, high-efficiency demand-controlled ventilation and energy-efficient boilers, more efficient exterior lighting and energy-efficient office equipment, replacing heating, ventilation, and cooling (HVAC) systems with more efficient boilers, motors, and variable-speed drives; reducing energy and maintenance costs by installing centralized energy management systems; lowering electric lighting and cooling loads and boosting productivity through increased use of daylighting, or installation of LED traffic lights.

Foard County shall use the SEP Offset Amount only for the incremental costs of the upgrades, and shall use its own funds for non-incremental construction costs. Specifically, the SEP Offset Amount may only be used for: 1) the cost of purchasing and installing renewable energy sources; 2) the cost of conducting energy efficiency audits necessary for performance of this project; 3) the incremental cost for purchase of equipment or appliances that are more energy-efficient (versus the cost of purchasing non-energy efficient equipment or appliances); or 4) the cost for contract labor to perform the energy efficiency upgrades (versus the cost of non-energy efficiency upgrades); Foard County shall submit a budget and expenditure proposals to TCEQ for written approval prior to the use of the SEP Offset Amount.

Foard County certifies that it has no prior budgetary or other commitment to do this project and that it is not receiving duplicative funding to perform this project. Foard County certifies that it shall not use SEP Funds to assist in complying with any governmental rule or regulation and that it is not required to perform this project under any existing rule or law. Foard County agrees to use a competitive bid process or other mechanism to ensure that costs of the project are reasonable and customary. Foard County shall perform this project in accordance with all federal, state and local environmental laws and regulations. The SEP Offset Amount may only be used for the direct cost of performing this project and no portion will be spent on Foard County’s administrative costs.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing air pollution through reduction of fuel and electricity usage for heating and cooling and other day-to-day operations. These reductions will reduce emissions of particulate matter (PM), volatile organic carbon (VOC) compounds, nitrogen oxides (NOx), and other pollutants associated with the combustion of fuel and generation of electricity.

C. Minimum Expenditure

Foard County shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Foard County shall begin implementation of this SEP. Foard County shall complete the project within 365 days after the effective date of this Agreed Order.

**3. Reporting**

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, Foard County shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above. Thereafter, Foard County shall submit Progress Reports every 90 days.

B. Final Report

Within 30 days after completion of the project, Foard County 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, or other verifying documentation attached;
2. The results of energy efficiency audits along with any completed modifications and associated budgets and proposal for expenditure to TCEQ.
3. A statement showing the quantification of the environmental benefit of each portion of the upgrades;
4. Before and after photographs of the project(s); and
5. Any additional information Foard County believes will demonstrate compliance with this Attachment A.

C. Address

Foard County shall submit all SEP reports and any requested additional information to the following:

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

and:

Waste/Air Section Manager  
Abilene Regional Office  
1977 Industrial Blvd  
Abilene TX 79602-7833

#### **4. Additional Information and Access**

Foard County shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. Foard County 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 Foard County 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 of incomplete performance, Foard County shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. Foard County shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it 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 Foard County 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**

Foard County shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, Foard County 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 Foard County 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 November 6, 2007

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	14-Nov-2007	<b>Screening</b>	14-Nov-2007	<b>EPA Due</b>	
	<b>PCW</b>	30-Jul-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	City of Crowell and Foard County		
<b>Reg. Ent. Ref. No.</b>	RN101478261		
<b>Facility/Site Region</b>	3-Abilene	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	34964	<b>No. of Violations</b>	4
<b>Docket No.</b>	2007-1857-MSW-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Enf. Coordinator</b>	Rajesh Acharya
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$11,500</b>
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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.

<b>Compliance History</b>	<b>0%</b> Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$0</b>
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Notes: No adjustment due to compliance history.

<b>Culpability</b>	No	<b>0%</b> Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondents do not meet the culpability criteria.

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

Notes: The Respondents do not meet the good faith criteria.

<b>Total EB Amounts</b>	<b>\$84,139</b>	<b>50% Enhancement*</b>	<b>Subtotal 6</b>	<b>\$5,750</b>
<b>Approx. Cost of Compliance</b>	<b>\$12,500</b>	<i>*Capped at the Total EB \$ Amount</i>		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$17,250</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>-33%</b>	<b>Adjustment</b>	<b>-\$5,750</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Reduction to remove the economic benefit enhancement.

<b>Final Penalty Amount</b>	<b>\$11,500</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$11,500</b>
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<b>DEFERRAL</b>	<b>0%</b> Reduction	<b>Adjustment</b>	<b>\$0</b>
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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.

<b>PAYABLE PENALTY</b>	<b>\$11,500</b>
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**Screening Date** 14-Nov-2007

**Docket No.** 2007-1857-MSW-E

**PCW**

**Respondent** City of Crowell and Foard County

Policy Revision 2 (September 2002)

**Case ID No.** 34964

PCW Revision November 6, 2007

**Reg. Ent. Reference No.** RN101478261

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Rajesh Acharya

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <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 adjustment due to compliance history.

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

Screening Date 14-Nov-2007

Docket No. 2007-1857-MSW-E

PCW

Respondent City of Crowell and Foard County

Policy Revision 2 (September 2002)

Case ID No. 34964

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101478261

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rajesh Acharya

Violation Number 1

Rule Cite(s) TCEQ Agreed Order Docket No. 1998-0666-MSW-E, Ordering Provision No. 5.b.1.A., and 30 Tex. Admin. Code § 37.111 [formerly 30 Tex. Admin. Code § 330.9]

Violation Description Failed to provide financial assurance for the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 8 2880 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	x
single event	

mark only one with an x

Violation Base Penalty \$8,000

Eight annual events are recommended from the order effective date of December 26, 1999 to the screening date of November 14, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$84,000

Violation Final Penalty Total \$8,000

This violation Final Assessed Penalty (adjusted for limits) \$8,000

## Economic Benefit Worksheet

**Respondent** City of Crowell and Foard County  
**Case ID No.** 34964  
**Reg. Ent. Reference No.** RN101478261  
**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				0.0	\$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

### 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]	\$10,000	26-Dec-1999	18-Jun-2007	8.0	\$4,000	\$80,000	\$84,000
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to obtain and maintain financial assurance. Date Required is the effective date of the agreed order when the Respondents were required to provide financial assurance. Final Date is the investigation date.

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$84,000

**Screening Date** 14-Nov-2007 **Docket No.** 2007-1857-MSW-E **PCW**  
**Respondent** City of Crowell and Foard County *Policy Revision 2 (September 2002)*  
**Case ID No.** 34964 *PCW Revision November 6, 2007*  
**Reg. Ent. Reference No.** RN101478261  
**Media [Statute]** Municipal Solid Waste  
**Enf. Coordinator** Rajesh Acharya

**Violation Number** 2  
**Rule Cite(s)** 30 Tex. Admin. Code §§ 330.219(a) [formerly Tex. Admin. Code § 330.113(a)], and 330.165(c)-(h) [formerly Tex. Admin. Code § 330.133(e)-(g)]

**Violation Description** Failed to maintain the record of the daily, intermediate and final cover within the landfill. Specifically, records showing daily, intermediate and final cover applications on the type 1 landfill were not available for review.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
	x			10%

**Matrix Notes** 100% of the rule requirement was not met.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 150 Number of violation days

*mark only one with an x*

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,000

One single event is recommended based on documentation of the violation during the June 18, 2007 investigation.

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

**Estimated EB Amount** \$27 **Violation Final Penalty Total** \$1,000

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

## Economic Benefit Worksheet

**Respondent** City of Crowell and Foard County  
**Case ID No.** 34964  
**Reg. Ent. Reference No.** RN101478261  
**Media** Municipal Solid Waste  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$500	18-Jun-2007	18-Jul-2008	1.1	\$27	n/a	\$27
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

Estimated cost to record daily, intermediate and final cover within the landfill. Date Required is the investigation date. Final Date is the estimated date of compliance.

### Avoided Costs

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

Disposal				0.0	\$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

\$500

**TOTAL**

\$27

Screening Date 14-Nov-2007

Docket No. 2007-1857-MSW-E

PCW

Respondent City of Crowell and Foard County

Policy Revision 2 (September 2002)

Case ID No. 34964

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101478261

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rajesh Acharya

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 330.127 [formerly 30 Tex. Admin. Code § 330.114]

Violation Description Failed to have an approved Site Operating Plan (SOP) for the type 1 landfill.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 150 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the June 18, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$58

Violation Final Penalty Total \$1,000

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

## Economic Benefit Worksheet

**Respondent** City of Crowell and Foard County  
**Case ID No.** 34964  
**Reg. Ent. Reference No.** RN101478261  
**Media** Municipal Solid Waste  
**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				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,000	18-Jun-2007	17-Aug-2008	1.2	\$58	n/a	\$58

Notes for DELAYED costs

Estimated cost to prepare and submit a Site Operating Plan. Date Required is the investigation date. Final Date is the estimated date of compliance.

### Avoided Costs

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

Disposal				0.0	\$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

\$1,000

**TOTAL**

\$58

**Screening Date** 14-Nov-2007 **Docket No.** 2007-1857-MSW-E **PCW**  
**Respondent** City of Crowell and Foard County *Policy Revision 2 (September 2002)*  
**Case ID No.** 34964 *PCW Revision November 6, 2007*  
**Reg. Ent. Reference No.** RN101478261  
**Media [Statute]** Municipal Solid Waste  
**Enf. Coordinator** Rajesh Acharya

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text" value="x"/>

**Violation Base Penalty**

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

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** City of Crowell and Foard County  
**Case ID No.** 34964  
**Reg. Ent. Reference No.** RN101478261  
**Media** Municipal Solid Waste  
**Violation No.** 4

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)	\$500	18-Jun-2007	18-Jul-2008	1.1	\$27	n/a	\$27

Notes for DELAYED costs

Estimated cost to provide buffer zone markers. Date Required is the investigation date. Final Date is the estimated date of compliance.

### Avoided Costs

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

Disposal				0.0	\$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

\$500

**TOTAL**

\$27

## Compliance History

Customer/Respondent/Owner-Operator:	CN600628333	City of Crowell	Classification: AVERAGE	Rating: 1.87
Regulated Entity:	RN101478261	CITY OF CROWELL FOARD COUNTY	Classification: HIGH	Site Rating: 0.00
ID Number(s):	TIRES	REGISTRATION	13865	
Location:	6.5E CROWELL SH7045 ON FM 267E .5 ON GRAVEL RD		Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 03 - ABILENE			
Date Compliance History Prepared:	November 06, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 06, 2002 to November 06, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Rajesh Acharya		Phone:	(512) 239-0577

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership 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.)
    - 1 07/01/2003 (134003)
    - 2 07/17/2007 (565812)
  - 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

## Compliance History

Customer/Respondent/Owner-Operator:	CN600770176	Foard County	Classification: AVERAGE	Rating: 1.87
Regulated Entity:	RN101478261	CITY OF CROWELL FOARD COUNTY	Classification: HIGH	Site Rating: 0.00
ID Number(s):	TIRES	REGISTRATION	13865	
Location:	6.5E CROWELL SH7045 ON FM 267E .5 ON GRAVEL RD		Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 03 - ABILENE			
Date Compliance History Prepared:	December 14, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 12, 2002 to December 14, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Rajesh Acharya		Phone:	(512) 239-0577

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership 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.)
    - 1 07/01/2003 (134003)
    - 2 07/17/2007 (565812)
  - 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  
CITY OF CROWELL AND  
FOARD COUNTY;  
RN101478261**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2007-1857-MSW-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding City of Crowell (“the City”) and Foard County (“the County”), (collectively referenced as “Respondents”) under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondents, represented by Mr. Clint T. Griffin, Kosub, Griffin & Elkins, LLP, presented this agreement to the Commission.

Respondents understand that they have 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, Respondents agree 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 Respondents.

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

**FINDINGS OF FACT**

1. Respondents operated a municipal solid waste landfill located near Highway 7045 and FM 267, Foard County, Texas (the “Facility”). Respondents hold MSW Permit No. 1401 (“the Permit”). TCEQ Municipal Solid Waste Permits Section approved a final closure plan for the Facility on October 5, 2007.
2. The Facility involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.

3. During an inspection conducted on June 18, 2007, a TCEQ Abilene Regional Office investigator documented that the City and the County:
  - a. Failed to provide financial assurance for the Facility;
  - b. Failed to maintain records at the Facility showing the daily, intermediate, and final cover within the landfill. Specifically, records showing daily, intermediate, and final cover applications on the type 1 landfill were not available for review;
  - c. Failed to have an approved Site Operating Plan (“SOP”) for the type 1 landfill; and
  - d. Failed to have grid, buffer, and boundary markers within the type 1 landfill. Specifically, the investigator observed that the landfill markers identifying the buffer zone were not in place during the investigation.
4. Respondents received notice of the violations on or about July 17, 2007.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Respondents are 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.a., Respondents failed to provide financial assurance for the Facility, in violation of 30 TEX. ADMIN. CODE § 37.111<sup>1</sup>; and TCEQ Agreed Order Docket No. 1998-0666-MSW-E, Ordering Provision No. 5.b.1.A.
3. As evidenced by Finding of Fact No. 3.b., Respondents failed to maintain records at the Facility showing the daily, intermediate, and final cover within the landfill, in violation of 30 TEX. ADMIN. CODE §§ 330.165(c), (d), (e), (f), (g), and (h) and 330.219(a).<sup>2</sup>
4. As evidenced by Finding of Fact No. 3.c., Respondents failed to have an approved SOP for the type 1 landfill, in violation of 30 TEX. ADMIN. CODE § 330.127.<sup>3</sup>
5. As evidenced by Finding of Fact No. 3.d., Respondents failed to have grid, buffer, and boundary markers within the type 1 landfill, in violation of 30 TEX. ADMIN. CODE § 330.143(a).<sup>4</sup>

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1 Formerly 30 TEX. ADMIN. CODE § 330.9, effective December 30, 1996; amended to be effective March 21, 2000.

2 Formerly 30 TEX. ADMIN. CODE §§ 330.113(a) and 330.133(e)-(g), effective March 27, 2006.

3 Formerly 30 TEX. ADMIN. CODE § 330.114, effective March 27, 2006.

4 Formerly 30 TEX. ADMIN. CODE § 330.122, effective March 27, 2006.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents 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.
7. An administrative penalty in the amount of eleven thousand five hundred dollars (\$11,500.00) 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. Pursuant to TEX. WATER CODE § 7.067, eleven thousand five hundred dollars (\$11,500.00) of the administrative penalty shall be conditionally offset by the County's completion of a Supplemental Environmental Project (SEP) as defined in Attachment A, incorporated herein by reference. Foard County's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon full compliance with the terms of this Agreed Order.

### **ORDERING PROVISIONS**

1. The Respondents are assessed an administrative penalty in the amount of eleven thousand five hundred dollars (\$11,500.00) as set forth in Conclusion of Law No. 7 for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondents' 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.
2. The County shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Conclusion of Law No.7, eleven thousand five hundred dollars (\$11,500.00) of the assessed administrative penalty shall be offset with the condition that the County implement the SEP defined in Attachment A, incorporated herein by reference. Foard County's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon full compliance with the terms of this Agreed Order.
3. Administrative penalty payments for any portion of the administrative penalty not offset by a Supplemental Environmental Project or for any portion of the Supplemental Environmental Project deemed by the Executive Director as not complete shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: City of Crowell and Foard County; Docket No. 2007-1857-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

4. Respondents shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Agreed Order, Respondents shall:
    - i. Submit documentation that demonstrates acceptable financial assurance for the Facility, in accordance with 30 TEX. ADMIN. CODE § 37.111 to:

Financial Assurance Unit, MC 184  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087
    - ii. Begin maintaining cover application record logs at the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 330.165 and 330.219(a);
    - iii. Properly place the buffer zone markers at all corners and between corners at intervals no greater than 300 feet, in accordance with 30 TEX. ADMIN. CODE § 330.143(a); and
    - iv. Submit a SOP to reflect the current operational status of the landfill, in accordance with 30 TEX. ADMIN. CODE § 330.127; or
    - v. In lieu of Ordering Provision Nos. 4.a.i. through 4.a.iv., submit a request to the Executive Director for revocation of the Permit, in accordance with 30 TEX. ADMIN. CODE § 305.68 (relating to Action and Notice on Petition for Revocation or Suspension). The Executive Director shall waive Ordering Provision Nos. 4.a.i. through 4.a.iv. after Respondents fulfill the requirements of Permit revocation, in accordance with 30 TEX. ADMIN. CODE § 305.131.
  - b. Within 180 days after the effective date of this Agreed Order, Respondents shall either:
    - i. Submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 4.a.i. through 4.a.iv., or
    - ii. Submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate that all requirements of the Permit revocation have been fulfilled.

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."

The certification shall be submitted to:

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

with a copy to:

Mike Taylor  
Waste Section Manager  
Abilene Regional Office  
Texas Commission on Environmental Quality  
1977 Industrial Drive  
Abilene, Texas 79602-7833

5. The provisions of this Agreed Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
6. If Respondents fail to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondents' failure to comply is not a violation of this Agreed Order. Respondents have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents

receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

8. 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 Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. This Agreed Order, issued by the Commission, shall not be admissible against Respondents 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.
11. 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.
12. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of this Agreed Order to Respondents, or three days after the date on which the Commission mails notice of this Agreed Order to Respondents, whichever is earlier.

City of Crowell and Board County  
TCEQ Docket No. 2007-1857-M5W-R  
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

*Gregory Penhale*

For the Executive Director

5/3/2010

Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of City of Crowell and Board County. I represent that I am authorized to agree to the attached Agreed Order on behalf of City of Crowell, and do agree to the specified terms and conditions. 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 the City's compliance history;
- Greater scrutiny of any permit applications submitted by the City;
- 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 the City;
- Automatic referral to the Attorney General's Office of any future enforcement actions against the City; 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.

*Gayle Simpson*  
Signature

3/11/2010  
Date

Gayle Simpson  
Name (printed or typed)  
Authorized Representative  
City of Crowell

Mayor  
Title

City of Crowell and Foard County  
TCEQ Docket No. 4007-1867-MSW-E  
Page 8

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Signature

For the Executive Director

5/3/2010

Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of City of Crowell and Foard County. I represent that I am authorized to agree to the attached Agreed Order on behalf of Foard County, and do agree to the specified terms and conditions. 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 the County's compliance history;
- Greater scrutiny of any permit applications submitted by the County;
- 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 the County;
- Automatic referral to the Attorney General's Office of any future enforcement actions against the County; 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.

Charlie Bell  
Signature

CHARLIE BELL

Name (printed or typed)  
Authorized Representative  
Foard County

3/11/2010

Date

Board County Judge  
Title

**Attachment A**  
**Docket Number: 2007-1857-MSW-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondents:** CITY OF CROWELL AND FOARD COUNTY  
**Penalty Amount:** Eleven Thousand Five Hundred Dollars (\$11,500)  
**SEP Offset Amount:** Eleven Thousand Five Hundred Dollars (\$11,500)  
**Type of SEP:** Custom  
**Location of SEP:** Foard County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative Penalty Amount assessed in this Agreed Order on the condition that Respondent Foard County performs the Supplemental Environmental Project (“SEP”) described herein. 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

Foard County shall provide supplemental energy efficiency upgrades to public buildings and infrastructure. Upgrades may include but are not limited to weatherization, energy-reduction modifications such as use of renewable energy sources; building envelope upgrades (cool roofs, exterior shading, optimized insulation and air sealing), installation of high-efficiency lighting fixtures and occupancy sensors for both lighting and HVAC, high-efficiency demand-controlled ventilation and energy-efficient boilers, more efficient exterior lighting and energy-efficient office equipment, replacing heating, ventilation, and cooling (HVAC) systems with more efficient boilers, motors, and variable-speed drives; reducing energy and maintenance costs by installing centralized energy management systems; lowering electric lighting and cooling loads and boosting productivity through increased use of daylighting, or installation of LED traffic lights.

Foard County shall use the SEP Offset Amount only for the incremental costs of the upgrades, and shall use its own funds for non-incremental construction costs. Specifically, the SEP Offset Amount may only be used for: 1) the cost of purchasing and installing renewable energy sources; 2) the cost of conducting energy efficiency audits necessary for performance of this project; 3) the incremental cost for purchase of equipment or appliances that are more energy-efficient (versus the cost of purchasing non-energy efficient equipment or appliances); or 4) the cost for contract labor to perform the energy efficiency upgrades (versus the cost of non-energy efficiency upgrades); Foard County shall submit a budget and expenditure proposals to TCEQ for written approval prior to the use of the SEP Offset Amount.

Foard County certifies that it has no prior budgetary or other commitment to do this project and that it is not receiving duplicative funding to perform this project. Foard County certifies that it shall not use SEP Funds to assist in complying with any governmental rule or regulation and that it is not required to perform this project under any existing rule or law. Foard County agrees to use a competitive bid process or other mechanism to ensure that costs of the project are reasonable and customary. Foard County shall perform this project in accordance with all federal, state and local environmental laws and regulations. The SEP Offset Amount may only be used for the direct cost of performing this project and no portion will be spent on Foard County’s administrative costs.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing air pollution through reduction of fuel and electricity usage for heating and cooling and other day-to-day operations. These reductions will reduce emissions of particulate matter (PM), volatile organic carbon (VOC) compounds, nitrogen oxides (NOx), and other pollutants associated with the combustion of fuel and generation of electricity.

C. Minimum Expenditure

Foard County shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Foard County shall begin implementation of this SEP. Foard County shall complete the project within 365 days after the effective date of this Agreed Order.

**3. Reporting**

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, Foard County shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above. Thereafter, Foard County shall submit Progress Reports every 90 days.

B. Final Report

Within 30 days after completion of the project, Foard County 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, or other verifying documentation attached;
2. The results of energy efficiency audits along with any completed modifications and associated budgets and proposal for expenditure to TCEQ.
3. A statement showing the quantification of the environmental benefit of each portion of the upgrades;
4. Before and after photographs of the project(s); and
5. Any additional information Foard County believes will demonstrate compliance with this Attachment A.

C. Address

Foard County shall submit all SEP reports and any requested additional information to the following:

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

and:

Waste/Air Section Manager  
Abilene Regional Office  
1977 Industrial Blvd  
Abilene TX 79602-7833

#### **4. Additional Information and Access**

Foard County shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. Foard County 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 Foard County 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 of incomplete performance, Foard County shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. Foard County shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it 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 Foard County 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**

Foard County shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, Foard County 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 Foard County under any other orders negotiated with the TCEQ or any other agency of the state or federal government.