

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2008-1400-MSW-E TCEQ ID RN101983989 and RN102819695 CASE NO. 5947
RESPONDENT NAME: ROBERT C. NICHOLS

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 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

SITES WHERE VIOLATION(S) OCCURRED: approximately 160 acres at the end of North Walker Road off of Highway 105, Montgomery County and San Jacinto County ("Site 1"), and approximately 80 acres at the end of the North Walker Road off of Highway 105, San Jacinto County ("Site 2")

TYPE OF OPERATION: Unauthorized disposal sites

SMALL BUSINESS: N/A

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding these facility locations.

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 31, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Peipey Tang, Litigation Division, MC 175, (512) 239-0654
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Clint Sims., Waste Enforcement Section, MC 128, (512) 239-6933

TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838

Respondent: Mr. Robert C. Nichols, 10276 North Walker Road, Cleveland, Texas 77328

Respondent's Attorney: Mr. W. R. Malone, P. O. Box 1083, Madisonville, Texas 77864

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p>___ Complaint ___ Routine <u>X</u> Enforcement Follow-up ___ Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 26, 2008</p> <p>Date of NOE Relating to this Case: July 25, 2008</p> <p>Background Facts: The EDRP was filed on October 24, 2008. Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the Agreed Order was signed on February 19, 2010.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation to certify compliance.</p> <p>MSW: Failed to deed record the properties related to both Sites as disposal areas in county records or remove and properly dispose of all remaining tires and municipal solid waste located at the Sites at an authorized facility [30 TEX. ADMIN. CODE §§ 330.15(c) and 330.19 and TCEQ Agreed Order Docket No. 2003-0287-MSW-E, Ordering Provision No. 2.b].</p>	<p>Total Assessed: \$3,600</p> <p>Total Deferred: \$0 ___ Expedited Order ___ Financial Inability to Pay ___ SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$200/\$3,400</p> <p>Respondent paid \$200 of the administrative penalty. The remaining amount of \$3,400 shall be payable in 34 monthly payments of \$100 each.</p> <p>Site Compliance History Classification: ___ High <u>X</u> Average ___ Poor</p> <p>Person Compliance History Classification: ___ High <u>X</u> Average ___ Poor</p> <p>Major Source: ___ Yes <u>X</u> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Order Justification: Indifference to legal duty based on violation of an Agreed Order.</p>	<p>Ordering Provisions:</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days, either: <ol style="list-style-type: none"> a. Deed record in the appropriate county records the disposal areas related to each Site using the language "Municipal Solid Waste Disposal Site," and provide copies of the recordings to the TCEQ; or b. Remove and properly dispose of at an authorized facility all remaining tires and municipal solid waste, including buried waste, located at each Site. 2. Within 45 days, submit written certification to demonstrate compliance with either Ordering Provision No. 1.a. or 1.b.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	28-Jul-2008			
	PCW	4-Sep-2008	Screening	20-Aug-2008	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Robert C. Nichols aka R C Nichols
Reg. Ent. Ref. No.	RN101983989 and RN102819695
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	5947	No. of Violations	1
Docket No.	2008-1400-MSW-E	Order Type	Findings
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Ross Fife
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	20.0% Enhancement	Subtotals 2, 3, & 7	\$600
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Notes: Enhancement due to one previous Agreed Order.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$163	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,600
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$3,600

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,600
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DEFERRAL	0.0% 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	\$3,600
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Screening Date 20-Aug-2008

Docket No. 2008-1400-MSW-E

PCW

Respondent Robert C. Nichols aka R C Nichols

Policy Revision 2 (September 2002)

Case ID No. 5947

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN101983989 and RN102819695

Media [Statute] Municipal Solid Waste

Enf. Coordinator Ross Fife

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>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<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) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement due to one previous Agreed Order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date 20-Aug-2008 **Docket No.** 2008-1400-MSW-E **PCW**
Respondent Robert C. Nichols aka R C Nichols *Policy Revision 2 (September 2002)*
Case ID No. 5947 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN101983989 and RN102819695
Media [Statute] Municipal Solid Waste
Enf. Coordinator Ross Fife

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code §§ 330.15(c) and 330.19 and TCEQ Agreed Order Docket No. 2003-0287-MSW-E, Ordering Provision No. 2.b
Violation Description Failed to comply with Ordering Provision No. 2.b. of TCEQ Agreed Order Docket No. 2003-0287-MSW-E, as documented during an investigation conducted on June 26, 2008. Specifically, the Respondent failed to deed record the properties related to both Sites as disposal areas in county records or remove and properly dispose of all remaining tires and municipal solid waste at the two sites.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 221 Number of violation days

<i>mark only one with an x</i>	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,000

Three quarterly events are recommended from the January 12, 2008 effective date of the Agreed Order to the August 20, 2008 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	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 for this violation.

Violation Subtotal \$3,000

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

Estimated EB Amount \$163 Violation Final Penalty Total \$3,600

This violation Final Assessed Penalty (adjusted for limits) \$3,600

Economic Benefit Worksheet

Respondent Robert C. Nichols aka R C Nichols
Case ID No. 5947
Reg. Ent. Reference No. RN101983989 and RN102819695
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$2,500	12-Jan-2008	1-May-2009	1.30	\$163	n/a	\$163

Notes for DELAYED costs

Estimated cost to dig up and properly dispose of tires at the sites. Date Required is the effective date of the previous agreed order and Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,500

TOTAL

\$163

Compliance History Report

Customer/Respondent/Owner-Operator: CN601089741 NICHOLS, R C Classification: AVERAGE Rating: 1.75
Regulated Entity: RN102819695 BOB NICHOLS Classification: AVERAGE Site Rating: 0.50
ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER SC0029A
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 455100029
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 455100036

Location: 10376 N. WALKER RD., CUT & SHOOT, MONTGOMERY COUNTY AND SAN JACINTO COUNTY
160 ACRES OF THE JOHN BRICKER SURVEY

TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: May 26, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 20, 2003 to August 20, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Staff Name Phone: 239 - 1000

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2007 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
 - Effective Date: 01/12/2008 ADMINORDER 2003-0287-MSW-E
 - Classification: Major
 - Citation: 30 TAC Chapter 330, SubChapter A 330.5(c)
 - Description: Failure to properly dispose of waste.
 - Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.5(c)
 - Description: Failure to dispose of municipal solid waste at an authorized facility.
 - 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 02/11/2004 (262759)
 - 2 03/28/2006 (452572)
 - 3 08/28/2006 (485087)
 - 4 07/25/2008 (684702)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - N/A
 - F. Environmental audits.
 - N/A
 - G. Type of environmental management systems (EMSs).
 - N/A
 - H. Voluntary on-site compliance assessment dates.
 - N/A
 - I. Participation in a voluntary pollution reduction program.
 - N/A
 - J. Early compliance.
 - N/A
- Sites Outside of Texas
N/A

Compliance History Report

Customer/Respondent/Owner-Operator: CN601089741 NICHOLS, R C Classification: AVERAGE Rating: 1.75
Regulated Entity: RN101983989 NICHOLS R C Classification: AVERAGE Site Rating: 0.50
ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER SC0029A
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 455100029
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 455100036

Location: 10376 N. WALKER RD., CUT & SHOOT, SAN JACINTO COUNTY
80 ACRES IN TRACT 87 OF THE MARTIN P. CLARK SURVEY

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: May 26, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 20, 2003 to August 20, 2008

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

Name: Staff Name Phone: 239 - 1000

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2007 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
 - Effective Date: 01/12/2008 ADMINORDER 2003-0287-MSW-E
 - Classification: Major
 - Citation: 30 TAC Chapter 330, SubChapter A 330.5(c)
 - Description: Failure to properly dispose of waste.
 - Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.5(c)
 - Description: Failure to dispose of municipal solid waste at an authorized facility.
 - 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 02/11/2004 (262759)
 - 2 03/28/2006 (452572)
 - 3 08/28/2006 (485087)
 - 4 07/25/2008 (684702)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
ROBERT C. NICHOLS;	§	
RN101983989 and RN102819695	§	ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1400-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 Robert C. Nichols aka R C Nichols (“Mr. Nichols”) 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 Mr. Nichols, represented by William R. Malone, Attorney-at-Law, presented this agreement to the Commission.

Mr. Nichols 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. Nichols 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. Nichols.

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

FINDINGS OF FACT

1. Mr. Nichols owns and operates an unauthorized disposal site on approximately 160 acres located at the end of North Walker Road off of Highway 105, Montgomery County and San Jacinto County, Texas (RN102819695) (“Site 1”), and owns and operates an unauthorized disposal site on approximately 80 acres located at the end of North Walker Road off of Highway 105, San Jacinto County, Texas (RN101983989) (“Site 2”) (collectively the “Sites”).

2. The Sites 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 26, 2008, a TCEQ Beaumont Region investigator documented that Mr. Nichols failed to deed record the properties related to both Sites as disposal areas in county records or remove and properly dispose of all remaining tires and municipal solid waste at the Sites.
4. Mr. Nichols received notice of the violation on or about July 30, 2008.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Nichols is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Nichols failed to deed record the properties related to both Sites as disposal areas in county records or remove and properly dispose of all remaining tires and municipal solid waste at the Sites, in violation of 30 TEX. ADMIN. CODE §§ 330.15(c) and 330.19, and TCEQ Agreed Order Docket No. 2003-0287-MSW-E, Ordering Provision No. 2.b.
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Nichols 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.
4. An administrative penalty in the amount of three thousand six hundred dollars (\$3,600.00) 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. Nichols has paid two hundred dollars (\$200.00) of the administrative penalty. The remaining amount of three thousand four hundred dollars (\$3,400.00) of the administrative penalty shall be payable in 34 monthly payments of one hundred (\$100.00) 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. Nichols 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. Nichols to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Nichols to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

1. Mr. Nichols is assessed an administrative penalty in the amount of three thousand six hundred dollars (\$3,600.00) as set forth in Conclusion of Law No. 4, above, for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Nichols'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: Robert C. Nichols; Docket No. 2008-1400-MSW-E" to:

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

2. Mr. Nichols shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of the this Agreed Order, Mr. Nichols shall either:
 - i. Deed record in the appropriate county records the disposal areas related to each Site, pursuant to 30 TEX. ADMIN. CODE § 330.19, using the language "Municipal Solid Waste Disposal Site," and provide copies of the recordings to the TCEQ; or
 - ii. Remove and properly dispose of, at an authorized facility, all remaining tires and municipal solid waste, including buried waste, located at each Site (MSW Unauthorized Site Nos. 455100029 and 455100036).
 - b. Within 45 days after the effective date of this Agreed Order, Mr. Nichols shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with either Ordering Provision No. 2.a.i. or Ordering Provision No. 2.a.ii.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals

immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of 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

and

Derek Eades, Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703-1830

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Nichols. Mr. Nichols is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Sites' operations referenced in this Agreed Order.
4. If Mr. Nichols 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. Nichols's failure to comply is not a violation of this Agreed Order. Mr. Nichols has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Nichols shall notify the Executive Director within seven days after Mr. Nichols 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. Nichols shall be made in writing to the Executive Director. Extensions are not effective until Mr. Nichols 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. Nichols if the Executive Director determines that Mr. Nichols 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. Nichols 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. 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 Mr. Nichols, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Nichols, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Shirley Parker
For the Executive Director

5/26/2010
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Robert C. Nichols. I represent that I am authorized to agree to the attached Agreed Order on behalf of Robert C. Nichols, 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 Mr. Nichols's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Nichols;
- 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 Mr. Nichols;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Nichols; 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.

x *Robert Curtis Nichols*
Signature

2/19/2010
Date

ROBERT CURTIS NICHOLS
Name (printed or typed)
Robert C. Nichols

2/19/2010
Title OWNER