

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1855-MSW-E RN105780217 CASE NO. 38700
RESPONDENT NAME: STARR COUNTY

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

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

SITE WHERE VIOLATION(S) OCCURRED: 4.3 miles north of the intersection of Highway 83 and Highway 755 near Rio Grande City, Starr County

TYPE OF OPERATION: Unauthorized disposal site

SMALL BUSINESS: N/A

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

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired July 5, 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: Ms. Elvia Maske, Waste Enforcement Section, MC 128, (512) 239-0789

TCEQ Regional Contact: Mr. Jaime Garza, Waste Section Manager, Harlingen Regional Office, R-15, (956) 430-6030

Respondent: Mr. Abel Gonzalez, Jr., County Commissioner, Precinct 4, Starr County, 500 North Britton Avenue, Rio Grande City, Texas 78582

Respondent's Attorney: Mr. Victor Canales, Starr County Attorney, 500 North Britton Avenue, Rio Grande City, Texas 78582; starrcountyattorney@yahoo.com

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: N/A</p> <p>Date of Investigation Relating to this Case: August 14, 2009</p> <p>Date of NOE Relating to this Case: August 25, 2009</p> <p>Background Facts: The EDPRP was filed on March 23, 2010. Settlement was achieved and the agreed order was signed on April 26, 2010.</p> <p>Current Compliance Status: No outstanding Technical Requirements. The waste was disposed of at the Starr County Landfill.</p> <p>MSW: Failed to prevent the unauthorized disposal of municipal solid waste [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p>Total Assessed: \$5,000</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid to General Revenue: \$5,000</p> <p>Respondent paid the administrative penalty in full.</p> <p>Site Compliance History Classification: <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action Taken:</p> <p>The Executive Director recognizes that as of January 20, 2010, Respondent ceased accepting and/or disposing of waste at the Site, removed all wastes from the Site, and disposed of the wastes at an authorized facility.</p>

Compliance History Report

Customer/Respondent/Owner-Operator: CN601141146 Starr County Classification: AVERAGE Rating: 5.82
Regulated Entity: RN105780217 Unauthorized Site Near Starr Classification: HIGH Site Rating: 0.00
County Landfill
ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 455150175
Location: 4.3 MILES N OF THE INTERSECTION OF HWY 83 AND
HWY 755.
TCEQ Region: REGION 15 - HARLINGEN
Date Compliance History Prepared: November 23, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 23, 2004 to November 23, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Elvia Maske Phone: (512) 239 - 0789

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court 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.)
08/28/2009 (765408)
 - 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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	31-Aug-2009	Screening	5-Oct-2009	EPA Due	
	PCW	13-Nov-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Starr County
Reg. Ent. Ref. No.	RN105780217
Facility/Site Region	15-Harlingen
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	38700	No. of Violations	1	
Docket No.	2009-1855-MSW-E	Order Type	1660	
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	Yes	
Multi-Media		Enf. Coordinator	Elvia Maske	
		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	\$5,000
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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	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment due to compliance history.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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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	\$82	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,310	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,000
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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	
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Final Penalty Amount	\$5,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,000
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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	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$5,000
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Screening Date 5-Oct-2009

Docket No. 2009-1855-MSW-E

PCW

Respondent Starr County

Policy Revision 2 (September 2002)

Case ID No. 38700

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105780217

Media [Statute] Municipal Solid Waste

Enf. Coordinator Elvia Maske

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Adjustment Percentage (Subtotal 2) 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	5-Oct-2009	Docket No.	2009-1855-MSW-E	PCW
Respondent	Starr County	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	38700	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN105780217			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Elvia Maske			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 330.15(c)(3)			
Violation Description	Failed to prevent the unauthorized disposal of municipal solid waste. Specifically, approximately 2,800 cubic yards of brush, construction and demolition waste, and household trash were disposed of at the Site.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

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

>> 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 or environmental receptors as a result of the violation.				
					Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events	2	Number of violation days	52	
<i>mark only one with an x</i>	daily			Violation Base Penalty \$5,000
	weekly			
	monthly	x		
	quarterly			
	semiannual			
	annual			
	single event			
Notes	Two monthly events are recommended based on documentation of the violation during the August 14, 2009 investigation to the October 5, 2009 screening date.			

Good Faith Efforts to Comply 0.0% Reduction \$0

		Before NOV	NOV to EDPRP/Settlement
Extraordinary			
Ordinary			
N/A	x		(mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.		
			Violation Subtotal \$5,000

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

Estimated EB Amount	\$82	Violation Final Penalty Total	\$5,000
		This violation Final Assessed Penalty (adjusted for limits)	\$5,000

Economic Benefit Worksheet

Respondent Starr County
Case ID No. 38700
Reg. Ent. Reference No. RN105780217
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$2,310	14-Aug-2009	1-May-2010	0.71	\$82	n/a	\$82
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and properly dispose of the waste at an authorized disposal site. The Date Required is the investigation date and the Final Date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,310

TOTAL

\$82

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
STARR COUNTY;
RN105780217**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-1855-MSW-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Starr County, 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 Starr County, represented by Victor Canales, Starr County Attorney, appear before the Commission and together stipulate that:

1. Starr County owns and operates an unauthorized disposal site located 4.3 miles north of the intersection of Highway 83 and Highway 755 near Rio Grande City, Starr County, Texas (the “Site”). The Site involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Commission and Starr County agree that the Commission has jurisdiction to enter this Agreed Order, and that Starr County is subject to the Commission’s jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Starr County of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
5. An administrative penalty in the amount of five thousand dollars (\$5,000.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Starr County paid five thousand dollars (\$5,000.00) of the administrative penalty.

6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and Starr County agree on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that during an investigation conducted on January 19, 2010 and January 20, 2010, a TCEQ Harlingen investigator documented that Starr County had ceased accepting and/or disposing any additional waste at the Site and removed all wastes from the Site and disposed of the wastes at an authorized facility.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings if the Executive Director determines that Starr County has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During an investigation conducted on August 14, 2009, a TCEQ Harlingen Regional Office investigator documented that Starr County violated 30 TEX. ADMIN. CODE § 330.15(c) by failing to prevent the unauthorized disposal of municipal solid waste. Specifically, approximately 2,800 cubic yards of brush, construction and demolition waste, and household trash were disposed of at the Site.
2. Starr County received notice of the violation on or about August 30, 2009.

III. DENIALS

Starr County generally denies each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Starr County pay an administrative penalty as set forth in Section I, Paragraph 5, above, for violations of TCEQ rules and state statutes. The

payment of this administrative penalty and Starr County's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which 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: Starr County, Docket No. 2009-1855-MSW-E to:

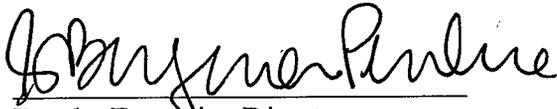
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Starr County. Starr County is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Starr County 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.
4. 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.
5. 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 the Agreed Order to Starr County, or three days after the date on which the Commission mails notice of this Agreed Order to Starr County, 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

6/25/2010

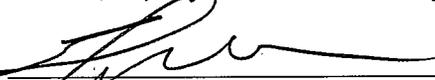
Date

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 the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Starr County's compliance history;
- Greater scrutiny of any permit applications submitted by Starr 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 Starr County;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Starr County; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

4/24/2010

Date

Eloy Vera

Name (Printed or typed)

Authorized representative of
Starr County

Starr County Judge

Title