

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1816-MLM-E RN105684823 CASE NO. 38671
RESPONDENT NAME: CYNTHIA ANN BATISTE AND LEROY CELESTINE

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" 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: 6380 Boyt Road, Beaumont, Jefferson County

TYPE OF OPERATION: unauthorized municipal solid waste disposal site

SMALL BUSINESS: N/A

OTHER SIGNIFICANT MATTERS: A complaint was received alleging that waste was being dumped and burned at the Site on weekends and holidays. There is no record of additional pending enforcement actions regarding this facility location.

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

COMMENTS RECEIVED: The *Texas Register* comment period expired August 23, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3400
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Audra Benoit, Waste Enforcement Section, MC R-10, (409) 899-8799

TCEQ Regional Contact: Derek Eades/Ronald Hebert, Beaumont Regional Office, MC R-10, (409) 898-3838

Respondents: Cynthia Ann Batiste, 6380 Boyt Road, Beaumont, Texas 77713
Leroy Celestine, 9556 Lawhon Road, Beaumont, Texas 77713

Respondents' Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: January 29, 2009</p> <p>Dates of Investigation Relating to this Case: January 30, 2009 (complaint investigation); April 16, 2009 (complaint follow-up); September 4, 2009, and February 10, 2010</p> <p>Dates of NOEs Relating to this Case: October 23, 2009, and April 13, 2010</p> <p>Background Facts: The EDPRP was filed on February 25, 2010. The EDFARP was filed on April 13, 2010. Respondents filed an answer and the case was referred to SOAH. On May 5, 2010, the TCEQ Chief Clerk mailed each Respondent a Notice of the preliminary hearing scheduled for May 27, 2010. On May 27, 2010, the ALJ convened the preliminary hearing but Respondents failed to appear. The matter was remanded to the ED and dismissed from the SOAH docket so that a Default Order may be entered.</p> <p>Current Compliance Status: Respondents have not yet submitted documentation to certify compliance with the technical requirements.</p> <p>MLM: Failed to prevent the unauthorized disposal of municipal solid waste, resulting in a discharge into or adjacent to water in the state [30 TEX. ADMIN. CODE § 330.15(c) and TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$1,050</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$1,050</p> <p>This is a Default Order. Respondents have not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification (Both Respondents): <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>Ordering Provisions:</p> <p>Respondents shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately cease accepting and disposing of municipal solid waste at the Site. 2. Within 30 days, properly remove and dispose of the municipal solid waste located at the Site. 3. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	26-Oct-2009			
	PCW	23-Mar-2010	Screening	9-Nov-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Cynthia Ann Batiste and Leroy Celestine				
Reg. Ent. Ref. No.	RN105684823				
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	38671	No. of Violations	1		
Docket No.	2009-1816-MLM-E	Order Type	1660		
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No		
Multi-Media	Water Quality	Enf. Coordinator	Kimberly Morales		
		EC's Team	Enforcement Team 5		
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,000
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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	5.0% Enhancement	Subtotals 2, 3, & 7	\$50
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Notes	Penalty enhancement due to one same or similar notice of violation.
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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	\$1,074	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$19,600	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,050
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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	\$1,050
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,050
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DEFERRAL		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	\$1,050
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Screening Date 9-Nov-2009

Docket No. 2009-1816-MLM-E

PCW

Respondent Cynthia Ann Batiste and Leroy Celestine

Policy Revision 2 (September 2002)

Case ID No. 38671

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105684823

Media [Statute] Municipal Solid Waste

Enf. Coordinator Kimberly Morales

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	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) 5%

>> 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

Penalty enhancement due to one same or similar notice of violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 9-Nov-2009	Docket No. 2009-1816-MLM-E	PCW			
Respondent Cynthia Ann Batiste and Leroy Celestine	<i>Policy Revision 2 (September 2002)</i>				
Case ID No. 38671	<i>PCW Revision October 30, 2008</i>				
Reg. Ent. Reference No. RN105684823					
Media [Statute] Municipal Solid Waste					
Enf. Coordinator Kimberly Morales					
Violation Number	1				
Rule Cite(s)	30 Tex. Admin. Code § 330.15(c) and Tex. Water Code § 26.121(a)				
Violation Description	<p>Failed to prevent the unauthorized disposal of municipal solid waste, resulting in an unauthorized discharge into or adjacent to water in the state. Specifically, TCEQ investigators documented approximately 2,800 cubic yards of debris, consisting primarily of construction and demolition waste generated off-site, was disposed of in an area of the Site located in and directly adjacent to a ditch, which during heavy rain events overflows into a drainage canal located 20 yards away from the end of the ditch.</p>				
Base Penalty		\$10,000			
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	x	
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		
		Percent	10%		
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		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 this violation.				
		Adjustment	\$9,000		
		\$1,000			
Violation Events					
Number of Violation Events		1	Number of violation days		67
<i>mark only one with an x</i>	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	x			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
		Violation Base Penalty \$1,000			
<p>One quarterly event is recommended based on documentation of the violation during the September 4, 2009 investigation to the November 9, 2009 screening date.</p>					
Good Faith Efforts to Comply					
		0.0%	Reduction		\$0
		Before NOV		NOV to EDPRP/Settlement	
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	<input type="text"/>	<input type="text"/>			
N/A	x	(mark with x)			
Notes	The Respondent does not meet the good faith criteria for this violation.				
		Violation Subtotal \$1,000			
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		\$1,074	Violation Final Penalty Total		\$1,050
		This violation Final Assessed Penalty (adjusted for limits) \$1,050			

Economic Benefit Worksheet

Respondent Cynthia Ann Batiste and Leroy Celestine
Case ID No. 38671
Reg. Ent. Reference No. RN105684823
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	\$19,600	4-Sep-2009	9-Oct-2010	1.10	\$1,074	n/a	\$1,074
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to properly dispose of municipal solid waste. The date required is the date of the investigation.
The 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

\$19,600

TOTAL

\$1,074

Compliance History Report

Customer/Respondent/Owner-Operator: CN603470204 Cynthia Ann Batiste
 Regulated Entity: RN105684823 6380 BOYT ROAD
 ID Number(s):
 Location: 6380 BOYT RD, BEAUMONT, TX, 77713
 TCEQ Region: REGION 10 - BEAUMONT
 Date Compliance History Prepared: November 09, 2009
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: November 09, 2004 to November 09, 2009
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Audra Benoit Phone: (409) 899-8799

Classification: AVERAGE Rating: 1.50
 Classification: AVERAGE Site Rating: 1.50

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.)
 - 1 06/19/2009 (742761)
 - 2 10/23/2009 (775392)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 03/05/2009 (726029)**
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 111, SubChapter B 111.201
30 TAC Chapter 330, SubChapter A 330.15(c)
5C THSC Chapter 382 382.085(b)
 - Description: Failure to conduct outdoor burning in an authorized manner and improperly disposing of municipal solid waste.
 - 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: CN603445321 CELESTINE, LEROY
 Regulated Entity: RN105684823 6380 BOYT ROAD
 ID Number(s):
 Location: 6380 BOYT RD, BEAUMONT, TX, 77713
 TCEQ Region: REGION 10 - BEAUMONT
 Date Compliance History Prepared: November 09, 2009
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: November 09, 2004 to November 09, 2009
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Audra Benoit Phone: (409) 899-8799

Classification: AVERAGE Rating: 1.50
 Classification: AVERAGE Site Rating: 1.50

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.)
 - 1 06/19/2009 (742761)
 - 2 10/23/2009 (775392)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 03/05/2009 (726029)**
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 111, SubChapter B 111.201
30 TAC Chapter 330, SubChapter A 330.15(c)
5C THSC Chapter 382 382.085(b)
 - Description: Failure to conduct outdoor burning in an authorized manner and improperly disposing of municipal solid waste.
 - 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
CYNTHIA ANN BATISTE AND
LEROY CELESTINE;
RN105684823**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-1816-MLM-E**

At its _____ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondents. The respondents made the subject of this Order are Cynthia Ann Batiste (“Ms. Batiste”) and Leroy Celestine (“Mr. Celestine”) (collectively referred to as “Respondents”).

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

FINDINGS OF FACT

1. Ms. Batiste owns property located at 6380 Boyt Road, Beaumont, Jefferson County, Texas (the “Site”). Mr. Celestine disposed of municipal solid waste at the Site.
2. The Site involves the management and/or disposal of municipal solid waste (“MSW”) as defined in TEX. HEALTH & SAFETY CODE ch. 361. Respondents have discharged waste from the Site into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any state water under the Texas Water Code.
3. During investigations conducted on September 4, 2009, and February 10, 2010, a TCEQ Beaumont Regional Office investigator documented that Respondents failed to prevent the unauthorized disposal of MSW, resulting in an unauthorized discharge into or adjacent to water in the state. Specifically, approximately 2,800 cubic yards of debris, consisting primarily of construction and demolition waste generated off-site, was disposed of in an area of the Site located in and directly adjacent to a ditch, which during heavy rain events overflows into a drainage canal located 20 yards away from the end of the ditch.
4. Respondents received notice of the violations on or about October 28, 2009, and April 18, 2010.

5. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Cynthia Ann Batiste and Leroy Celestine” (the “EDPRP”) in the TCEQ Chief Clerk’s office on February 25, 2010.
6. By letter dated February 25, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served each Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRPs sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Respondents received notice of the EDPRP.
7. The Executive Director filed the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Cynthia Ann Batiste and Leroy Celestine” (the “EDFARP”) in the TCEQ Chief Clerk’s office on April 13, 2010.
8. By letter dated April 13, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served each Respondent with notice of the EDFARP. The United State Postal Service returned the EDFARPs sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Respondents received notice of the EDFARP.
9. Respondents filed an answer requesting a hearing on March 17, 2010, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings (“SOAH”) on April 22, 2010.
10. On May 5, 2010, the TCEQ Chief Clerk mailed the Notice of the May 27, 2010, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to each Respondent. The United States Postal Service returned the Notices sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Respondents received notice of the May 27, 2010, preliminary hearing.
11. On May 27, 2010, the Administrative Law Judge (“ALJ”) convened the preliminary hearing, but Respondents failed to appear. The ALJ entered a finding that Respondents were served with proper notice of the preliminary hearing, and the Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.
12. The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Dismissing Case and Remanding to the Executive Director, on May 28, 2010, so that TCEQ may dispose of the case on a default basis.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Respondents failed to prevent the unauthorized disposal of MSW, resulting in an unauthorized into or adjacent to water in the state, in violation of 30 TEX. ADMIN. CODE § 330.15(c) and TEX. WATER CODE § 26.121(a).
3. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondents with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Findings of Fact Nos. 7 and 8, the Executive Director timely served Respondents with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 9, Respondents filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 30 TEX. ADMIN. CODE § 70.109.
6. As evidenced by Finding of Fact No. 10, Respondents were provided proper notice of the preliminary hearing pursuant to TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE § 155.501(c) and (e)(2), and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
7. As evidenced by Finding of Fact No. 11, Respondents failed to appear at the preliminary hearing. Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), and 30 TEX. ADMIN. CODE § 70.106(b), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.
8. 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.
9. An administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) is justified by the facts recited in this Order and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

10. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondents are assessed an administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Respondents' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Cynthia Ann Batiste and Leroy Celestine; Docket No. 2009-1816-MLM-E" to:

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

2. Respondents shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Respondents shall cease accepting and disposing of municipal solid waste at the Site;
 - b. Within 30 days after the effective date of this Order, Respondents shall remove and properly dispose of the municipal solid waste located at the Site;
 - c. Within 45 days after the effective date of this Order, Respondents shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. 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."

Respondents shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. to:

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

with copies to:

Derek Eades, Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

and

Ronald Hebert, Water Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Respondents fail to comply with any of the Ordering Provisions in this 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 Order. Respondents shall 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.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this 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.

7. 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 Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF STEPHANIE J. FRAZEE

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Stephanie J. Frazee. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the ‘Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Cynthia Ann Batiste and Leroy Celestine’ (the ‘EDPRP’) was filed with the Office of the Chief Clerk on February 25, 2010.

By letter dated February 25, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served each Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRPs sent by certified mail as ‘unclaimed.’ The first class mail has not been returned, indicating that Respondents received notice of the EDPRP.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the ‘Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Cynthia Ann Batiste and Leroy Celestine’ (the ‘EDFARP’) was filed with the Office of the Chief Clerk on April 13, 2010.

The EDFARP was mailed to each Respondent at their last known address on April 13, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDFARPs sent by certified mail as ‘unclaimed.’ The first class mail has not been returned, indicating that Respondents received notice of the EDFARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

Respondents filed an answer requesting a hearing on March 17, 2010, and the matter was referred to the State Office of Administrative Hearings (‘SOAH’) on April 22, 2010.

Notice of the May 27, 2010, preliminary hearing was mailed to each Respondent by the TCEQ Chief Clerk on May 5, 2010. The Notice was sent to each Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the Notices sent by certified mail as ‘unclaimed.’ The first class mail has not been returned, indicating that Respondents received notice of the May 27, 2010, preliminary hearing.

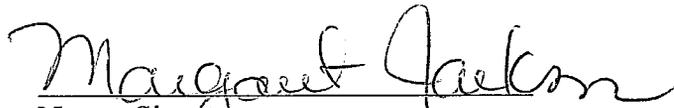
Respondents failed to appear at the preliminary hearing on May 27, 2010. At that hearing, I requested and received a finding that Respondents were served with proper notice of the hearing pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(2). I also requested and received a remand from the Administrative Law Judge ('ALJ') pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), which gives an ALJ the authority to remand the case back to the agency 'to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056 and the referring agency's rules.' Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director."



Stephanie J. Frazee, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Stephanie J. Frazee, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 25 day of June, A.D., 2010.


Notary Signature