

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2010-0048-MSW-E **TCEQ ID:** RN100225390 **CASE NO.:** 39041
RESPONDENT NAME: City of Port Arthur

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 AND 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: City of Port Arthur Landfill, 4732 Highway 73, Port Arthur, Jefferson County

TYPE OF OPERATION: Municipal solid waste landfill

SMALL BUSINESS: Yes No

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 has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on October 18, 2010. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Keith Frank, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-1203; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
Respondent: Mr. Michael Tentrup, Assistant Solid Waste Superintendent, City of Port Arthur, P.O. Box 1089, Port Arthur, Texas 77641
 Mr. John A. Comeaux, Assistant City Manager/Operations, City of Port Arthur, P.O. Box 1089, Port Arthur, Texas 77641
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 6, 2009</p> <p>Date of NOV/NOE Relating to this Case: November 19, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failed to repair eroded areas of the intermediate cover within five days of detection. Specifically, cell nos. 42, 43 and 46 had significant amounts of erosion and exposed waste [30 TEX. ADMIN. CODE § 330.165(g), and Municipal Solid Waste ("MSW") Permit No. 1815A, Site Operating Plan, Section 4.17.5].</p> <p>2) Failed to prevent the unauthorized discharge of waste into and adjacent to the water in the state. Specifically, leachate level of cell no. 46 was greater than 12 inches above the landfill liner and was running off cell no. 46 into a drainage ditch. Also, the investigator observed several areas where water was contaminated by coming into contact with exposed waste [30 TEX. ADMIN. CODE §§ 330.15(a), 330.207(b), and 330.305(g), and TEX. WATER CODE § 26.121(a), and MSW Permit No. 1815A, Site Operating Plan, Section 4.20].</p> <p>3) Failed to design, construct and maintain a run-on control system and a run-off management system capable of preventing flow onto or from the active portion of the landfill. Specifically, the active portion of the cell did not have run-on or run-off berms to prevent additional water from coming into contact with the cells and contaminated water from running off the cell [30 TEX. ADMIN. CODE §</p>	<p>Total Assessed: \$23,825</p> <p>Total Deferred: \$4,765 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$19,060</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has submitted documentation on January 7, 2010, demonstrating the implementation of the following corrective measures at the Facility:</p> <p>a. Repaired the eroded areas on cell nos. 42, 43, and 46;</p> <p>b. Repaired the leachate collection system;</p> <p>c. Began utilizing run-on and run-off berms in the active cell area to control water;</p> <p>d. Installed new directional signs and prohibited waste signs;</p> <p>e. Moved east-west markers to make them visible from the working face, installed new north-south intermediate markers, repaired benchmark; and</p> <p>f. Began maintaining training and inspection records.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit modification application to update the SOP to reflect the current chain of command information for the Facility; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

330.305(b) and (c) and MSW Permit No. 1815A, Site Operating Plan, Section 4.20].

4) Failed to maintain appropriate signs regarding directions and prohibited waste. Specifically, there were no directional signs to help direct traffic and there were no signs displaying the lists of prohibited waste [30 TEX. ADMIN. CODE § 330.133(a), and MSW Permit No. 1815A, Site Operating Plan, Section 4.4].

5) Failed to maintain the visibility of all required landfill markers, the benchmark, and failed to inspect landfill markers on a monthly basis and maintain records of all inspections at the Facility. Specifically, the intermediate east-west markers were not visible from the working face, the Facility's benchmark was damaged and records for monthly inspections of these markers were not being maintained [30 TEX. ADMIN. CODE § 330.143(a), and MSW Permit No. 1815A, Site Operating Plan, Section 4.7].

6) Failed to amend the site operating plan ("SOP") prior to deviating from the operational requirements of the SOP. Specifically, the SOP was not updated to reflect that the chain of command for the landfill had changed [30 TEX. ADMIN. CODE § 330.73(a), and MSW Permit No. 1815A, Site Operating Plan, Section 2.1].

7) Failed to maintain records of all inspections and training for appropriate Facility personnel responsible for inspecting or observing loads to recognize prohibited waste [30 TEX. ADMIN. CODE § 330.127(5)(B) and (C), and MSW Permit No. 1815A, Site Operating Plan, Section 2.2].

8) Failed to maintain less than a 30 centimeter depth of leachate over the landfill liner. Specifically, leachate level measurements revealed elevated levels of leachate on the liners of cell nos. 40, 42, 43, 44A, 44B and 45 [30 TEX. ADMIN. CODE § 330.331(a)(2) and MSW Permit No. 1815A, Site Operating Plan, Section 4.21].



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	28-Dec-2009	Screening	3-Jan-2010	EPA Due	
	PCW	5-Jan-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Port Arthur
Reg. Ent. Ref. No.	RN100225390
Facility/Site Region	10-Beaumont
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	39041	No. of Violations	8
Docket No.	2010-0048-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Keith Frank
		EC's Team	Enforcement Team 8
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 3-Jan-2010

Docket No. 2010-0048-MSW-E

PCW

Respondent City of Port Arthur

Policy Revision 2 (September 2002)

Case ID No. 39041

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100225390

Media [Statute] Municipal Solid Waste

Enf. Coordinator Keith Frank

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)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (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) 25%

>> 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 for one 1660 order containing a denial of liability and one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date 3-Jan-2010 **Docket No.** 2010-0048-MSW-E **PCW**
Respondent City of Port Arthur *Policy Revision 2 (September 2002)*
Case ID No. 39041 *PCW Revision October 30, 2009*
Reg. Ent. Reference No. RN100225390
Media [Statute] Municipal Solid Waste
Enf. Coordinator Keith Frank
Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 330.165(g) and Municipal Solid Waste ("MSW") Permit No. 1815A, Site Operating Plan, Section 4.17.5
Violation Description Failed to repair eroded areas of the intermediate cover within five days of detection, as documented during an investigation conducted on October 6, 2009. Specifically, cell nos. 42, 43, and 46 had significant amounts of erosion and exposed waste.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%
Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.
Adjustment \$9,000

Violation Subtotal \$1,000

Violation Events
 Number of Violation Events: 3 90 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x
Violation Base Penalty \$3,000
 Three single events are recommended (one for each cell).

Good Faith Efforts to Comply 10.0% Reduction \$300

	Before NOV	NOV to EDRP/Settlement
	Extraordinary	
Ordinary		x
N/A		(mark with x)

Notes The Respondent came into compliance on January 7, 2010.
Violation Subtotal \$2,700

Economic Benefit (EB) for this violation **Statutory Limit Test**
Estimated EB Amount \$27 **Violation Final Penalty Total** \$3,450
This violation Final Assessed Penalty (adjusted for limits) \$3,450

Economic Benefit Worksheet

Respondent: City of Port Arthur
Case ID No.: 39041
Reg. Ent. Reference No.: RN100225390
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$1,500	6-Oct-2009	7-Jan-2010	0.25	\$1	\$25	\$27
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to repair eroded landfill cover material. The Date Required is the investigation date and the Final Date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$1,500

TOTAL

\$27

Screening Date: 3-Jan-2010

Docket No: 2010-0048-MSW-E

PCW

Respondent: City of Port Arthur

Policy Revision 2 (September 2002)

Case ID No: 39041

PCW Revision October 30, 2008

Reg. Ent. Reference No: RN100225390

Media [Statute]: Municipal Solid Waste

Enf. Coordinator: Keith Frank

Violation Number: 2

Rule Cite(s): 30 Tex. Admin. Code §§ 330.15(a), 330.207(b), and 330.305(g), Tex. Water Code § 26.121(a) and MSW Permit No. 1815A, Site Operating Plan, Section 4.20

Violation Description: Failed to prevent the unauthorized discharge of waste into and adjacent to the water in the state, as documented during an investigation conducted on October 6, 2009. Specifically, leachate was running off cell no. 46 into a drainage ditch. Also, the investigator observed several areas where water was contaminated by coming into contact with exposed waste.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	25%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

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

Adjustment: \$7,500

\$2,500

Violation Events

Number of Violation Events: 1 Number of violation days: 90

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

Violation Base Penalty: \$2,500

One quarterly event is recommended based on the October 6, 2009 investigation date to the January 3, 2010 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$250

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes: The Respondent came into compliance on January 7, 2010.

Violation Subtotal: \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$0

Violation Final Penalty Total: \$2,875

This violation Final Assessed Penalty (adjusted for limits): \$2,875

Economic Benefit Worksheet

Respondent: City of Port Arthur

Case ID No.: 39041

Reg. Ent. Reference No.: RN100225390

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				0.00	\$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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit included in Violaiton No. 8.

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

\$0

TOTAL

\$0

Screening Date 3-Jan-2010

Docket No. 2010-0048-MSW-E

PCW

Respondent City of Port Arthur

Policy Revision 2 (September 2002)

Case ID No. 39041

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100225390

Media [Statute] Municipal Solid Waste

Enf. Coordinator Keith Frank

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 330.305(b) and (c) and MSW Permit No. 1815A, Site Operating Plan, Section 4.20

Violation Description

Failed to design, construct and maintain a run-on control system and a run-off management system capable of preventing flow onto or from the active portion of the landfill, as documented during an investigation conducted on October 6, 2009. Specifically, the active portion of the cell did not have proper run-on or run-off berms to prevent additional water from coming into contact with the cell and contaminated water from running off the cell.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		X	

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

90 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended based on the October 6, 2009 investigation date and the January 3, 2010 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$250

	Before NOV	NOV to EDPRP/Settlement Offer
	Extraordinary	
Ordinary		X
N/A		(mark with x)

Notes The Respondent came into compliance on January 7, 2010.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$18

Violation Final Penalty Total \$2,875

This violation Final Assessed Penalty (adjusted for limits) \$2,875

Economic Benefit Worksheet

Respondent: City of Port Arthur
Case ID No: 39041
Reg. Ent. Reference No.: RN100225390
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$1,000	6-Oct-2009	7-Jan-2010	0.25	\$1	\$17	\$18
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to construct barriers for run-on and run-off control. The Date Required is the investigation date and the Final Date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$1,000

TOTAL

\$18

Screening Date: 3-Jan-2010

Docket No: 2010-0048-MSW-E

PGW

Respondent: City of Port Arthur

Policy Revision 2 (September 2002)

Case ID No: 39041

PCW Revision October 30, 2008

Reg. Ent. Reference No: RN100225390

Media [Statute]: Municipal Solid Waste

Enf. Coordinator: Keith Frank

Violation Number: 4

Rule Cite(s): 30 Tex. Admin. Code § 330.133(a) and MSW Permit No. 1815A, Site Operating Plan, Section 4.4

Violation Description

Failed to maintain appropriate signs regarding directions and prohibited waste, as documented during an investigation conducted on October 6, 2009. Specifically, there were no directional signs to help direct traffic and there were no signs displaying the lists of prohibited waste.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential		X		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events: 1 Number of violation days: 90

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended based on the October 6, 2009 investigation date and the January 3, 2010 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$250

	Before NOV	NOV to ED/PRP/Settlement Offer
	Extraordinary	
Ordinary		X
N/A		(mark with x)

Notes: The Respondent came into compliance on January 7, 2010.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$2,875

This violation Final Assessed Penalty (adjusted for limits) \$2,875

Economic Benefit Worksheet

Respondent City of Port Arthur
Case ID No. 38041
Reg. Ent. Reference No. RN100225390
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$500	6-Oct-2009	7-Jan-2010	0.25	\$6	n/a	\$6

Notes for DELAYED costs

Estimated cost to install the required signs. The Date Required is the investigation date and the Final Date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$500

TOTAL

\$6

Screening Date 3-Jan-2010

Docket No. 2010-0048-MSW-E

PGW

Respondent City of Port Arthur

Policy Revision 2 (September 2002)

Case ID No. 39041

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100225390

Media [Statute] Municipal Solid Waste

Enf. Coordinator Keith Frank

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 330.143(a) and MSW Permit 1815A, Site Operating Plan, Section 4.7

Violation Description

Failed to maintain the visibility of all required landfill markers, the benchmark, and failed to inspect landfill markers on a monthly basis and maintain records of all inspections at the Facility, as documented during an investigation conducted on October 6, 2009. Specifically, the intermediate east-west markers were not visible from the working face the Facility's benchmark was damaged, and records for monthly inspections of these markers were not being maintained.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		X	

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

90 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended based on the October 6, 2009 investigation date and the January 3, 2010 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$250

	Before NOV	NOV to EDRP/Settlement Offer
	Extraordinary	
Ordinary		X
N/A		(mark with x)

Notes The Respondent came into compliance on January 7, 2010.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$2,875

This violation Final Assessed Penalty (adjusted for limits) \$2,875

Economic Benefit Worksheet

Respondent: City of Port Arthur
Case ID No.: 39041
Req. Ent. Reference No.: RN100225390
Media: Municipal Solid Waste
Violation No.: 6

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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	6-Oct-2009	7-Jan-2010	0.25	\$6	n/a	\$6

Notes for DELAYED costs

Estimated cost to provide and maintain site boundary markers and benchmark, to conduct monthly inspections, and to maintain the inspection records. The Date Required is the investigation date and the Final Date is the 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

\$500

TOTAL

\$6

Screening Date: 3-Jan-2010

Docket No.: 2010-0048-MSW-E

PCW

Respondent: City of Port Arthur

Policy Revision 2 (September 2002)

Case ID No.: 39041

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN100225390

Media [Statute]: Municipal Solid Waste

Enf. Coordinator: Keith Frank

Violation Number: 6

Rule Cite(s): 30 Tex. Admin. Code § 330.73(a) and MSW Permit 1815A, Site Operating Plan, Section 2.1

Violation Description:

Failed to amend the site operating plan ("SOP") prior to deviating from the operational requirements of the SOP, as documented during an investigation conducted on October 6, 2009. Specifically, the SOP was not updated to reflect the current chain of command for the landfill had changed.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			25%

Matrix Notes

100-percent of the rule requirement was not met.

Adjustment: \$7,500

\$2,500

Violation Events

Number of Violation Events: 1 Number of violation days: 90

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

Violation Base Penalty: \$2,500

One single event is recommended based on the October 6, 2009 investigation date to the January 3, 2010 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: \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$25

Violation Final Penalty Total: \$3,125

This violation Final Assessed Penalty (adjusted for limits): \$3,125

Economic Benefit Worksheet

Respondent: City of Port Arthur
Case ID No.: 39041
Reg. Ent. Reference No.: RN100225390
Media: Municipal Solid Waste
Violation No.: 6

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$500	6-Oct-2009	9-Oct-2010	1.01	\$25	n/a	\$25
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update the SOP to accurately reflect the Facility's chain of command. The Date Required is the date of the investigation and the Final Date is the estimated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$500

TOTAL

\$25

Screening Date 3-Jan-2010

Docket No. 2010-0048-MSW-E

PCW

Respondent City of Port Arthur

Policy Revision 2 (September 2002)

Case ID No. 39041

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN100225390

Media [Statute] Municipal Solid Waste

Enf. Coordinator Keith Frank

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 330.127(5)(B) and (C) and MSW Permit No. 1815A, Site Operating Plan, Section 2.2

Violation Description Failed to maintain records of all inspections and training for appropriate Facility personnel responsible for inspecting or observing loads to recognize prohibited waste.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			25%

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

Adjustment \$7,500

\$2,500

Violation Events

1 90 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$2,500

One single event is recommended based on the October 6, 2009 investigation date to the January 3, 2010 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$250

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes The Respondent came into compliance on January 7, 2010.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8

Violation Final Penalty Total \$2,875

This violation Final Assessed Penalty (adjusted for limits) \$2,875

Economic Benefit Worksheet

Respondent: City of Port Arthur
Case ID No.: 39041
Reg. Ent. Reference No.: RN100225390
Media: Municipal Solid Waste
Violation No.: 7

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	\$500	6-Oct-2009	7-Jan-2010	0.25	\$6	n/a	\$6
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly maintain training and inspection records. The Date Required is the investigation date and the Final Date is the 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

\$500

TOTAL

\$6

Screening Date 3-Jan-2010

Docket No. 2010-0048-MSW-E

PCW

Respondent City of Port Arthur

Policy Revision 2 (September 2002)

Case ID No. 39041

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100225390

Media [Statute] Municipal Solid Waste

Enf. Coordinator Keith Frank

Violation Number 8

Rule Cite(s) 30 Tex. Admin. Code § 330.331(a)(2) and MSW Permit No. 1815A, Site Operating Plan, Section 4.21

Violation Description

Failed to maintain less than a 30 centimeter depth of leachate over the landfill liner, as documented during an investigation conducted on October 6, 2009. Specifically, leachate level measurements revealed elevated levels of leachate on the liners of cell nos. 40, 42, 43, 44A, 44B and 45.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

1

90 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on the October 6, 2009 investigation date and the January 3, 2010 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$250

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes The Respondent came into compliance on January 7, 2010.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,846

Violation Final Penalty Total \$2,875

This violation Final Assessed Penalty (adjusted for limits) \$2,875

Economic Benefit Worksheet

Respondent: City of Port Arthur
Case ID No.: 39041
Req. Ent. Reference No.: RN100225390
Media: Municipal Solid Waste
Violation No.: 8

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$103,506	6-Oct-2009	7-Jan-2010	0.25	\$88	\$1,758	\$1,846
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Tranfing/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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The actual cost to repair the leachate system. Date required is the date of the investigation and the Final Date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$103,506

TOTAL

\$1,846

Compliance History Report

Customer/Respondent/Owner-Operator: CN600132021 City of Port Arthur Classification: AVERAGE Rating: 5.14
 Regulated Entity: RN100225390 CITY OF PORT ARTHUR LANDFILL Classification: AVERAGE Site Rating: 38.17

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	JE0198P
	AIR OPERATING PERMITS	PERMIT	1546
	MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	1815A
	AIR NEW SOURCE PERMITS	AFS NUM	4824500711
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	JE0198P
	AIR NEW SOURCE PERMITS	REGISTRATION	81990
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	73468
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	JE0198P

Location: 4732 HIGHWAY 73, PORT ARTHUR, TX, 77642

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: January 05, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 05, 2005 to January 05, 2010

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

Name: Keith Frank Phone: (512) 239-1203

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? Yes
3. If Yes, who is the current owner/operator?

City of Port Arthur
 City of Port Arthur
4. If Yes, who was/were the prior owner(s)/operator(s) ?

LESLIE, MCMAHEN
 City of Port Arthur
5. When did the change(s) in owner or operator occur?

05/18/2005

6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- Effective Date: 03/05/2007 ADMINORDER 2005-0884-MSW-E
 - Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter E 330.55(b)(2)
30 TAC Chapter 330, SubChapter F 330.111
 - Rqmt Prov: Section 6.0 Site Operating Plan PERMIT
 - Description: Failure to train facility personnel to inspect and provide screening for hazardous waste and PCB waste.
 - Classification: Minor
 - Citation: 30 TAC Chapter 330, SubChapter A 330.5(e)(4)
30 TAC Chapter 330, SubChapter F 330.117(c)

Description: Failure to prohibit disposal of whole scrap tires.

Classification: Minor

Citation: 30 TAC Chapter 330, SubChapter F 330.111
30 TAC Chapter 330, SubChapter F 330.133(a)

Rqmt Prov: Subsection 4.22 PERMIT
Description: Failure to apply daily cover.

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter F 330.111
30 TAC Chapter 330, SubChapter F 330.133(b)

Rqmt Prov: Subsection 4.22 PERMIT

Description: Failure to apply intermediate cover within 180 days.

Classification: Minor

Citation: 30 TAC Chapter 330, SubChapter F 330.133(f)
Description: Failure to repair erosion.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 330, SubChapter A 330.5(a)

30 TAC Chapter 330, SubChapter F 330.139

Rqmt Prov: Subsection 4.26 and Section 7.0 PERMIT
Description: Failure to prohibit unauthorized discharges.

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter E 330.55(b)(2)
30 TAC Chapter 330, SubChapter F 330.111

Rqmt Prov: Sections 4.0 and 8.0 PERMIT

Description: Failure to maintain a maximum one foot depth of leachate over the landfill liner in landfill cell numbers 44A-C, 45 and 46.

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	04/28/2005	(372666)
2	04/18/2008	(636763)
3	07/30/2008	(687627)
4	10/07/2008	(701636)
5	07/29/2009	(762793)
6	11/19/2009	(778537)
7	12/08/2009	(784291)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/18/2008 (636763) CN600132021

Self NO Classification: Moderate
Report?

Citation: 30 TAC Chapter 330, SubChapter F 330.121(a)
Description: Failure to comply with general operating standards. The facility failed to maintain leachate levels at less than 12" on the landfill liner as per the permit requirements. B19e14

Self NO Classification: Minor
Report?

Citation: 30 TAC Chapter 330, SubChapter F 330.121(a)

Description: Failure to implement approved site operating plan (SOP). During the investigation on February 12, 2008, it was noted that windblown waste was not being controlled by the use of litter control fences at the working face, as stated in Section 4.5.

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 PORT ARTHUR
RN100225390

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2010-0048-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Port Arthur ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a municipal solid waste landfill at 4732 Highway 73 in Port Arthur, Jefferson County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about November 24, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twenty-Three Thousand Eight Hundred Twenty-Five Dollars (\$23,825) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Nineteen Thousand Sixty Dollars (\$19,060) of the administrative penalty and Four Thousand Seven Hundred Sixty-Five Dollars (\$4,765) is deferred

- contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.
7. 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.
 8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
 9. The Executive Director recognizes that the City has submitted documentation on January 7, 2010, demonstrating the implementation of the following corrective measures at the Facility:
 - a. Repaired the eroded areas on cell nos. 42, 43, and 46;
 - b. Repaired the leachate collection system;
 - c. Began utilizing run-on and run-off berms in the active cell area to control water;
 - d. Installed new directional signs and prohibited waste signs;
 - e. Moved east-west markers to make them visible from the working face, installed new north-south intermediate markers, repaired benchmark; and
 - f. Began maintaining training and inspection records.
 10. 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 the City has not complied with one or more of the terms or conditions in this Agreed Order.
 11. 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.
 12. 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

As owner and operator of the Facility, the City is alleged to have:

1. Failed to repair eroded areas of the intermediate cover within five days of detection, in violation of 30 TEX. ADMIN. CODE § 330.165(g), and Municipal Solid Waste ("MSW") Permit No. 1815A, Site Operating Plan, Section 4.17.5, as documented during an investigation conducted on October 6, 2009. Specifically, cell nos. 42, 43 and 46 had significant amounts of erosion and exposed waste.

2. Failed to prevent the unauthorized discharge of waste into and adjacent to the water in the state, in violation of 30 TEX. ADMIN. CODE §§ 330.15(a), 330.207(b), and 330.305(g), and TEX. WATER CODE § 26.121(a), and MSW Permit No. 1815A, Site Operating Plan, Section 4.20, as documented during an investigation conducted on October 6, 2009. Specifically, leachate level of cell no. 46 was greater than 12 inches above the landfill liner and was running off cell no. 46 into a drainage ditch. Also, the investigator observed several areas where water was contaminated by coming into contact with exposed waste.
3. Failed to design, construct and maintain a run-on control system and a run-off management system capable of preventing flow onto or from the active portion of the landfill, in violation of 30 TEX. ADMIN. CODE § 330.305(b) and (c) and MSW Permit No. 1815A, Site Operating Plan, Section 4.20, as documented during an investigation conducted on October 6, 2009. Specifically, the active portion of the cell did not have run-on or run-off berms to prevent additional water from coming into contact with the cells and contaminated water from running off the cell.
4. Failed to maintain appropriate signs regarding directions and prohibited waste, in violation of 30 TEX. ADMIN. CODE § 330.133(a), and MSW Permit No. 1815A, Site Operating Plan, Section 4.4, as documented during an investigation conducted on October 6, 2009. Specifically, there were no directional signs to help direct traffic and there were no signs displaying the lists of prohibited waste.
5. Failed to maintain the visibility of all required landfill markers, the benchmark, and failed to inspect landfill markers on a monthly basis and maintain records of all inspections at the Facility, in violation of 30 TEX. ADMIN. CODE § 330.143(a), and MSW Permit No. 1815A, Site Operating Plan, Section 4.7, as documented during an investigation conducted on October 6, 2009. Specifically, the intermediate east-west markers were not visible from the working face, the Facility's benchmark was damaged and records for monthly inspections of these markers were not being maintained.
6. Failed to amend the site operating plan ("SOP") prior to deviating from the operational requirements of the SOP, in violation of 30 TEX. ADMIN. CODE § 330.73(a), and MSW Permit No. 1815A, Site Operating Plan, Section 2.1, as documented during an investigation conducted on October 6, 2009. Specifically, the SOP was not updated to reflect that the chain of command for the landfill had changed.
7. Failed to maintain records of all inspections and training for appropriate Facility personnel responsible for inspecting or observing loads to recognize prohibited waste, in violation of 30 TEX. ADMIN. CODE § 330.127(5)(B) and (C), and MSW Permit No. 1815A, Site Operating Plan, Section 2.2, as documented during an investigation conducted on October 6, 2009.
8. Failed to maintain less than a 30 centimeter depth of leachate over the landfill liner, in violation of 30 TEX. ADMIN. CODE § 330.331(a)(2) and MSW Permit No. 1815A, Site Operating Plan, Section 4.21, as documented during an investigation conducted on October 6, 2009. Specifically, leachate level measurements revealed elevated levels of leachate on the liners of cell nos. 40, 42, 43, 44A, 44B and 45.

III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City'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 requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Port Arthur, Docket No. 2010-0048-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. It is further ordered that the City shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit modification application to update the SOP to reflect the current chain of command information for the Facility, in accordance with 30 TEX. ADMIN. CODE § 330.73 to:

Municipal Solid Waste Permits Section, MC 124
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Agreed Order, 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. 2.a. 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 fines 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:

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

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

John S. Zoller
For the Executive Director

10/11/2010
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

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

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

John A. Comeaux
Signature

7/30/2010
Date

JOHN A. COMEAUX
Name (Printed or typed)
Authorized Representative of
City of Port Arthur

Asst City Manager/Operations
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.