

Executive Summary – Enforcement Matter – Case No. 39596
VACATION HOME BUILDERS, INC.
RN102685393
Docket No. 2010-0706-MLM-E

Order Type:

Agreed Order

Findings Order Justification:

N/A

Media:

MLM – AIR, MSW and WQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Cedar Point Subdivision off Highway 190 adjacent to Lake Livingston near Livingston, Polk County

Type of Operation:

construction site

Other Significant Matters:

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: None

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: August 5, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$4,637

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$157

Total Due to General Revenue: \$4,480
35 payments of \$128

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – Average

Site/RN – Average by Default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): September 21, 2009
Complaint Information: Complaint alleged that Respondent was dumping construction and demolition waste and vegetative waste into Lake Livingston.

Date(s) of Investigation: March 8, 2010

Date(s) of NOV(s): N/A

Date(s) of NOE(s): April 14, 2010

Violation Information

1. Failed to prevent the unauthorized disposal of MSW, resulting in an unauthorized discharge (approx. 34 cu/yds of C&D and vegetative waste) [30 TEX. ADMIN. CODE § 330.15 and TEX. WATER CODE § 26.121].
2. Failed to prohibit the burning of MSW for the purpose of disposal (approx. 14 cu/yds of C&D waste and vegetative waste) [TEX. ADMIN. CODE §111.201 and TEX. HEALTH AND SAFETY CODE § 382.085(b)]
3. Failed to obtain authorization to discharge storm water associated with construction activities [TEX. ADMIN. CODE § 281.25(a)(4), and 40 C.F.R. § 122.26(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Removed all MSW from the Site and disposed of it at an authorized facility.

Technical Requirements:

1. Immediately, cease burning and disposing of any additional MSW at the Site.
2. Within 30 days, develop and implement a Storm Water Pollution Prevention Plan and submit a Notice of Intent letter to comply with the Multi-Sector Industrial General Permit requirements.
3. Within 45 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: November 2, 2010

Date Answer(s) Filed: December 20, 2010

SOAH Referral Date: January 24, 2011

Hearing Date(s):
Preliminary hearing: March 24, 2011
Evidentiary hearing: July 15, 2011

Settlement Date: June 28, 2011

Contact Information

TCEQ Attorneys: Xavier Guerra, Litigation Division, (210) 403-4016
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ Enforcement Coordinator: Danielle Porras, Waste Enforcement Section, (713) 767-3682

TCEQ Regional Contact: Derek Eades, Beaumont Regional Office, (409) 898-3838

Respondent: Charles Von Schmidt, President, Vacation Home Builders, Inc., 185 Cedar Point Drive, Livingston, Texas 77351-6703

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	19-Apr-2010			
	PCW	4-Apr-2011	Screening	26-Apr-2010	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Vacation Home Builders, Inc.				
Reg. Ent. Ref. No.	RN102685393				
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	39596	No. of Violations	3		
Docket No.	2010-0706-MLM-E	Order Type	1660		
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No		
Multi-Media	Water Quality and Air	Enf. Coordinator	Danielle Porras		
		EC's Team	Enforcement Team 7		
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$4,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment for compliance history.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$925	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$5,609	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	15.9%	Adjustment	\$637
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.
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Final Penalty Amount	\$4,637
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,637
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$4,637
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Screening Date 26-Apr-2010

Docket No. 2010-0706-MLM-E

PCW

Respondent Vacation Home Builders, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39596

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102685393

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

Screening Date	26-Apr-2010	Docket No.	2010-0706-MLM-E	PCW
Respondent	Vacation Home Builders, Inc.			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39596			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102685393			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Danielle Porras			
Violation Number	<input type="text" value="1"/>			
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 330.15 and Tex. Water Code § 26.121"/>			
Violation Description	<input 34="" adjacent="" an="" and="" approximately="" at="" construction="" cubic="" demolition="" discharge.="" disposed="" ground="" in="" lake="" livingston."="" msw"),="" of="" on="" resulting="" site="" specifically,="" the="" to="" type="text" unauthorized="" value="Failed to prevent the unauthorized disposal of municipal solid waste (" vegetative="" was="" waste="" yards=""/>			
Base Penalty	<input type="text" value="\$10,000"/>			

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="10%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
Matrix Notes	<input type="text" value="Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation."/>				
					Adjustment <input type="text" value="\$9,000"/>

Violation Events

Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="49"/>	Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input checked="" type="text" value="x"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
<input type="text" value="One quarterly event is recommended from the March 8, 2010 investigation to the April 26, 2010 screening date."/>			

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	<input checked="" type="text" value="x"/>	(mark with x)	
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>		
Violation Subtotal			<input type="text" value="\$1,000"/>

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

Estimated EB Amount	<input type="text" value="\$34"/>	Violation Final Penalty Total	<input type="text" value="\$1,159"/>
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$1,159"/>	

Economic Benefit Worksheet

Respondent Vacation Home Builders, Inc.
Case ID No. 39596
Reg. Ent. Reference No. RN102685393
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	\$772	8-Mar-2010	21-Jan-2011	0.87	\$34	n/a	\$34
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the MSW and dispose of it at a facility authorized to accept the waste. The date required is the investigation date 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)

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

\$772

TOTAL

\$34

Screening Date	26-Apr-2010	Docket No.	2010-0706-MLM-E	PCW
Respondent	Vacation Home Builders, Inc.			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39596			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102685393			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Danielle Porras			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code §111.201 and Tex. Health and Safety Code § 382.085(b)			
Violation Description	Failed to prohibit the burning of MSW for the purpose of disposal. Specifically, approximately 14 cubic yards of vegetative waste, construction debris, metal, HardiPlank, wire, lumber, and treated wood was burned.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent 0%
Matrix Notes	Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation.				

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events	1	49	Number of violation days
<i>mark only one with an x</i>	daily		Violation Base Penalty \$1,000
	weekly		
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		

One quarterly event is recommended from the March 8, 2010 investigation to the April 26, 2010 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/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 \$1,000

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

Estimated EB Amount \$637 **Violation Final Penalty Total** \$1,159

This violation Final Assessed Penalty (adjusted for limits) \$1,159

Economic Benefit Worksheet

Respondent Vacation Home Builders, Inc.
Case ID No. 39596
Reg. Ent. Reference No. RN102685393
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

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]	\$637	7-Mar-2010	8-Mar-2010	0.00	\$0	\$637	\$637
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to have properly disposed of the MSW at an authorized facility rather than burning. The date required is one day prior to the date the unauthorized burning was documented and the final date is the date the unauthorized burning was documented.

Approx. Cost of Compliance

\$637

TOTAL

\$637

Screening Date	26-Apr-2010	Docket No.	2010-0706-MLM-E	PCW
Respondent	Vacation Home Builders, Inc.			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39596			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102685393			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Danielle Porras			
Violation Number	3			
Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4), and 40 Code of Federal Regulations § 122.26(c)			
Violation Description	Failed to obtain authorization to discharge storm water associated with construction activities.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential				
				0%	

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		x			
					10%
	100% of the rule requirement was not met.				
	Adjustment				\$9,000

\$1,000

Violation Events

Number of Violation Events	2	Number of violation days	49	Violation Base Penalty	\$2,000
<i>mark only one with an x</i>	daily				
	weekly				
	monthly	x			
	quarterly				
	semiannual				
	annual				
	single event				
Two monthly events are recommended based on documentation of the violation during the March 8, 2010 investigation date to the April 26, 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	\$2,000		

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

Estimated EB Amount	\$127	Violation Final Penalty Total	\$2,319
This violation Final Assessed Penalty (adjusted for limits)		\$2,319	

Economic Benefit Worksheet

Respondent Vacation Home Builders, Inc.
Case ID No. 39596
Reg. Ent. Reference No. RN102685393
Media Municipal Solid Waste
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$2,000	8-Mar-2010	21-Jan-2011	0.87	\$6	\$117	\$122
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	\$100	8-Mar-2010	21-Jan-2011	0.87	\$4	n/a	\$4
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to obtain a storm water permit and to develop and implement a storm water pollution prevention plan and submit a Notice of Intent. The date required is the investigation date 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)

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

Notes for AVOIDED costs:

Approx. Cost of Compliance	\$2,100	TOTAL	\$127
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Compliance History Report

Customer/Respondent/Owner-Operator: CN603562547 Vacation Home Builders, Inc. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN102685393 CEDAR POINT Classification: AVERAGE Site Rating: 3.01
BY DEFAULT
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1870155
WATER LICENSING LICENSE 1870155
Location: CEDAR POINT SUBDIVISION, OFF HWY 190 ADJACENT TO LAKE LIVINGSTON, NEAR LIVINGSTON, TX
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: April 23, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 23, 2005 to April 23, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Brianna Carlson Phone: 956/430-6021

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 judgements, 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.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
VACATION HOME BUILDERS, INC.;
RN102685393**

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§
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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2010-0706-MLM-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Vacation Home Builders, Inc. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE chs. 361 and 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Respondent owns and operates a construction site located in Cedar Point Subdivision off Highway 190 adjacent to Lake Livingston near Livingston, Polk County, Texas (the "Site"). The Site adjoins, is contiguous with, surrounds, or is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5). The Site involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of four thousand six hundred thirty-seven dollars (\$4,637.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid one hundred fifty-seven dollars (\$157.00) of the administrative penalty. The remaining amount of four thousand four hundred eighty dollars (\$4,480.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of one hundred twenty-eight dollars (\$128.00) each. The

first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. The Executive Director recognizes that Respondent removed all MSW from the Site and disposed of it at an authorized facility in December 2010 (Allegations 1.a. and 1.b.).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During an investigation on March 8, 2010, a TCEQ Beaumont Regional Office investigator documented that Respondent:
 - a. Failed to prevent the unauthorized disposal of MSW, resulting in an unauthorized discharge. Specifically, approximately 34 cubic yards of construction and demolition waste and vegetative waste was disposed of at the Site on the ground adjacent to Lake Livingston, in violation of 30 TEX. ADMIN. CODE § 330.15 and TEX. WATER CODE § 26.121;
 - b. Failed to prohibit the burning of MSW for the purpose of disposal. Specifically, approximately 14 cubic yards of vegetative waste, construction debris, metal, HardiPlank, wire, lumber, and treated wood was burned, in violation of 30 TEX. ADMIN. CODE §111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b); and

- c. Failed to obtain authorization to discharge storm water associated with construction activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c).
2. Respondent received notice of the violations on or about April 19, 2010.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Vacation Home Builders, Inc., Docket No. 2010-0706-MLM-E" to:

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

2. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Respondent shall cease burning and disposing of any additional MSW at the Site (Allegations 1.a. and 1.b.).
 - b. Within 30 days after the effective date of this Agreed Order, Respondent shall develop and implement a Storm Water Pollution Prevention Plan and submit a Notice of Intent letter to comply with the Multi-Sector Industrial General Permit requirements in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CFR § 122.26(c) (Allegation 1.c.) to:

Texas Commission on Environmental Quality
Storm Water Processing Center, MC 228
P.O. Box 13087
Austin, Texas 78711-3087

- c. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or 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 shall 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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

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

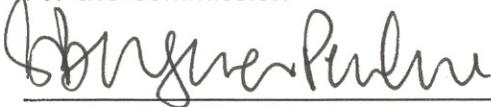
3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If Respondent 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes 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 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. This Agreed Order, issued by the Commission, shall not be admissible against Respondent 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.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

8/30/2011

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Vacation Home Builders, Inc., 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

Signature - Charles Von Schmidt, President
Vacation Home Builders, Inc.

6-28-2011

Date