Executive Summary – Enforcement Matter – Case No. 41521
MDLS, INC. dba DLS Environmental Services
RN106102601
Docket No. 2011-0611-MSW-E

Order Type:
1660 Agreed Order
Findings Order Justification:
N/A
Media:
MSW
Small Business:
Yes
Location(s) Where Violation(s) Occurred:
DLS Environmental Services, 201C Kodak Boulevard, Longview, Gregg County and a municipal solid waste ("MSW") Type I landfill at 5155 Farm-to-Market Road 2867, Henderson, Rusk County
Type of Operation:
Environmental remediation company
Other Significant Matters:
Additional Pending Enforcement Actions: No
Past-Due Penalties: No
Other: N/A
Interested Third-Parties: None
Texas Register Publication Date: August 26, 2011
Comments Received: No

Penalty Information

Total Penalty Assessed: $1,691
Amount Deferred for Expedited Settlement: $338
Amount Deferred for Financial Inability to Pay: $0
Total Paid to General Revenue: $1,353
Total Due to General Revenue: $0
Payment Plan: N/A
SEP Conditional Offset: $0
Name of SEP: N/A
Compliance History Classifications:
Person/CN - N/A
Site/RN - N/A
Major Source: No
Statutory Limit Adjustment: N/A
Applicable Penalty Policy: September 2002

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Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: March 18, 2011
Date(s) of NOE(s): April 14, 2011

Violation Information

Failed to dispose of special waste at an authorized facility. Specifically, 45 cubic yards of soil containing 4,220 parts per million of total petroleum hydrocarbons was disposed of at a facility not authorized to receive the waste [30 TEX. ADMIN. CODE § 330.103(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

a. Within 15 days, develop and implement procedures to ensure that all MSW is disposed of at authorized facilities; and

b. Within 30 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Philip Aldridge, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0855; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.
TCEQ SEP Coordinator: N/A
Respondent: Dennis W. La Master, President, MDLS, INC., P.O. Box 2467, Longview, Texas 75606
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision October 30, 2008*

TCEQ

DATES						
Assigned	18-Apr-2011					
PCW	26-Apr-2011	**Screening**	19-Apr-2011	**EPA Due**		

RESPONDENT/FACILITY INFORMATION

Respondent	MDLS, INC. dba DLS Environmental Services		
Reg. Ent. Ref. No.	RN106102601		
Facility/Site Region	10-Beaumont	**Major/Minor Source**	Minor

CASE INFORMATION

Enf./Case ID No.	41521	**No. of Violations**	1
Docket No.	2011-0611-MSW-E	**Order Type**	1660
Media Program(s)	Municipal Solid Waste	**Government/Non-Profit**	No
Multi-Media		**Enf. Coordinator**	Philip Aldridge
		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* **$1,000**

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**

Notes: No adjustment for compliance history.

Culpability No **0.0%** Enhancement — *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* **$0**

Economic Benefit **0.0%** Enhancement* — *Subtotal 6* **$0**

Total EB Amounts $729
Approx. Cost of Compliance $1,691

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$1,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE **69.1%** — *Adjustment* **$691**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture avoided costs associated with the violation.

Final Penalty Amount **$1,691**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$1,691**

DEFERRAL **20.0%** Reduction — *Adjustment* **-$338**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$1,353**

Screening Date 19-Apr-2011 **Docket No.** 2011-0611-MSW-E **PCW**

Respondent MDLS, INC. dba DLS Environmental Services

Policy Revision 2 (September 2002)

Case ID No. 41521

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106102601

Media [Statute] Municipal Solid Waste

Enf. Coordinator Philip Aldridge

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	*Enter Number Here*	Adjust.
NOVs	Written notices of violation ("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%

		Please Enter Yes or No	
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)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

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 19-Apr-2011 **Docket No.** 2011-0611-MSW-E **PCW**

Respondent MDLS, INC. dba DLS Environmental Services *Policy Revision 2 (September 2002)*

Case ID No. 41521 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN106102601

Media [Statute] Municipal Solid Waste

Enf. Coordinator Philip Aldridge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 330.103(b)

Violation Description Failed to dispose of special waste at an authorized facility. Specifically, 45 cubic yards of soil containing 4,220 parts per million of total petroleum hydrocarbons was disposed of at a facility not authorized to receive the waste.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Harm		
Release	Major	Moderate	Minor
Actual			x
Potential			

OR

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 — 32 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the March 18, 2011 record review to the April 19, 2011 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 $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $729

Statutory Limit Test

Violation Final Penalty Total $1,691

This violation Final Assessed Penalty (adjusted for limits) $1,691

Economic Benefit Worksheet

Respondent MDLS, INC. dba DLS Environmental Services
Case ID No. 41521
Reg. Ent. Reference No. RN106102601
Media Municipal Solid Waste
Violation No. 1

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							
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)	$1,000	18-Mar-2011	18-Dec-2011	0.75	$38	n/a	$38
Notes for DELAYED costs	Estimated cost to develop and implement procedures to ensure that all wastes are transported to a facility authorized to accept the waste, and to develop standard operating procedures which are to be followed by employees in the transport and disposal of waste. The Date Required is the record review 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]	$691	18-Jan-2011	19-Jan-2011	0.00	$0	$691	$691
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	Estimated avoided cost for disposal of the waste at an authorized facility. The Date Required is one day prior to the Respondent disposing of waste at the facility and the Final Date is the date of disposal.						

Approx. Cost of Compliance $1,691

TOTAL $729

Compliance History

Customer/Respondent/Owner-Operator:	CN603824475	MDLS, INC.	Classification:	Rating:
Regulated Entity:	RN106102601	DLS Environmental Services	Classification:	Site Rating:

ID Number(s):

Location: 201C KODAK BLVD, LONGVIEW, TX, 75602

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: April 19, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 19, 2006 to April 19, 2011

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

Name: Philip Aldridge Phone: (512) 239-0855

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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.

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 March 11, 2011 (906606)

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

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING MDLS, INC. DBA DLS ENVIRONMENTAL SERVICES RN106102601	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2011-0611-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 MDLS, INC. dba DLS Environmental Services ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates an environmental remediation company at 201C Kodak Boulevard in Longview, Gregg County, Texas. The Respondent disposed of solid waste at a municipal solid waste ("MSW") Type I landfill at 5155 Farm-to-Market Road 2867 in Henderson, Rusk County, Texas.

2. The Respondent's business involves or involved the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 19, 2011.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Six Hundred Ninety-One Dollars ($1,691) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Three Hundred Fifty-Three Dollars ($1,353) of the administrative penalty and Three Hundred Thirty-Eight Dollars ($338) is deferred contingent upon the Respondent'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 Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent 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 Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

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 the 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

As a transporter of MSW, the Respondent is alleged to have failed to dispose of special waste at an authorized facility, in violation of 30 TEX. ADMIN. CODE § 330.103(b), as documented during a record review conducted on March 18, 2011. Specifically, 45 cubic yards of soil containing 4,220 parts per million of total petroleum hydrocarbons was disposed of at a facility not authorized to receive the waste.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the 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 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: MDLS, INC. dba DLS Environmental Services, Docket No. 2011-0611-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 Respondent shall undertake the following technical requirements:

   a. Within 15 days after the effective date of this Agreed Order, develop and implement procedures to ensure that all MSW is disposed of at authorized facilities; and

   b. Within 30 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 Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over operations referenced in this Agreed Order.

4. If the 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 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.

7. 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.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the 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 — Date: 9/12/11

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.

Signature — Date: 7-15-2011

DENNIS W. LA MASTER — PRESIDENT

Name (Printed or typed) — Title
Authorized Representative of
MDLS, INC. dba DLS Environmental Services

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.