

Executive Summary – Enforcement Matter – Case No. 41570
Waste Management of Texas, Inc.
RN100218676
Docket No. 2011-0658-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

No

Location(s) Where Violation(s) Occurred:

Mesquite Creek Landfill, 1000 Kohlenberg Road, New Braunfels, Comal County

Type of Operation:

Municipal solid waste landfill

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: August 19, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$1,875

Amount Deferred for Expedited Settlement: \$375

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$1,500

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

**Executive Summary – Enforcement Matter – Case No. 41570
Waste Management of Texas, Inc.
RN100218676
Docket No. 2011-0658-AIR-E**

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: March 7 and 8, 2011
Date(s) of NOE(s): March 15, 2011

Violation Information

Failed to submit a permit compliance certification (“PCC”) within 30 days after the end of the August 3, 2009 through August 2, 2010, certification period. Specifically, the PCC was due September 1, 2010, but was not submitted until March 4, 2011 [30 TEX. ADMIN. CODE § 122.146(2), Federal Operating Permit No. O-2373, General Operating Permit No. 517, Site-wide Requirements No. (b)(2), and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that on March 4, 2011, the Respondent submitted the PCC for the August 3, 2009 through August 2, 2010 certification period.

Technical Requirements:

N/A

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: Raymond Marlow, P.G., Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8785; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.
TCEQ SEP Coordinator: N/A
Respondent: Steve Jacobs, Director of Disposal Operations, Waste Management of Texas, Inc., 1000 Kohlenberg Road, New Braunfels, Texas 78130
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Mar-2011	Screening	26-Apr-2011	EPA Due	9-Dec-2011
	PCW	17-May-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Waste Management of Texas, Inc.		
Reg. Ent. Ref. No.	RN100218676		
Facility/Site Region	13-San Antonio	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	41570	No. of Violations	1
Docket No.	2011-0658-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Raymond Marlow, P. G.
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **\$2,500**

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* **\$625**

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

Total EB Amounts: \$13
Approx. Cost of Compliance: \$500
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 *Final Subtotal* **\$1,875**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** *Adjustment* **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$1,875**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **\$1,875**

DEFERRAL **20.0%** Reduction *Adjustment* **-\$375**

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 **\$1,500**

Screening Date 26-Apr-2011

Docket No. 2011-0658-AIR-E

PCW

Respondent Waste Management of Texas, Inc.

Policy Revision 2 (September 2002)

Case ID No. 41570

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100218676

Media [Statute] Air

Enf. Coordinator Raymond Marlow, P. G.

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

Adjustment Percentage (Subtotal 2) 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-2011

Docket No. 2011-0658-AIR-E

PCW

Respondent Waste Management of Texas, Inc.

Policy Revision 2 (September 2002)

Case ID No. 41570

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100218676

Media [Statute] Air

Enf. Coordinator Raymond Marlow, P. G.

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 122.146(2), Federal Operating Permit No. O-2373, General Operating Permit No. 517, Site-wide Requirements No. (b)(2), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to submit a permit compliance certification ("PCC") within 30 days after the end of the August 3, 2009 through August 2, 2010, certification period. Specifically, the PCC was due September 1, 2010, but was not submitted until March 4, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			25%

Matrix Notes 100% of the rule requirements were not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 185

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 for the one late PCC.

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes The Respondent achieved compliance on March 4, 2011, prior to the March 15, 2011 NOE.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$13

Violation Final Penalty Total \$1,875

This violation Final Assessed Penalty (adjusted for limits) \$1,875

Economic Benefit Worksheet

Respondent Waste Management of Texas, Inc.
Case ID No. 41570
Reg. Ent. Reference No. RN100218676
Media Air
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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	1-Sep-2010	4-Mar-2011	0.50	\$13	n/a	\$13

Notes for DELAYED costs

Estimated expense to prepare and submit a PCC. The date required is the date the PCC was due to be submitted. The final date is the date that the PCC was submitted.

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

\$13

Compliance History

Customer/Respondent/Owner-Operator: CN600127856 Waste Management of Texas, Inc. Classification: AVERAGE Rating: 2.56
 Regulated Entity: RN100218676 MESQUITE CREEK LANDFILL Classification: HIGH Site Rating: 0.00

ID Number(s):	AIR OPERATING PERMITS	PERMIT	2373
	AIR OPERATING PERMITS	ACCOUNT NUMBER	CS0004M
	AIR NEW SOURCE PERMITS	AFS NUM	4809100633
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	CS0113G
	AIR NEW SOURCE PERMITS	REGISTRATION	82411
	USED OIL	REGISTRATION	C81225
	MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	48029
	MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	40200
	MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	66B
	MUNICIPAL SOLID WASTE PROCESSING	REGISTRATION	40200
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	CS0113G

Location: 1000 KOHLENBERG RD, NEW BRAUNFELS, COMAL COUNTY, TX, 78130

TCEQ Region: REGION 13 - SAN ANTONIO

Date Compliance History Prepared: April 18, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 18, 2006 to April 18, 2011

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

Name: Raymond Marlow, P.G. Phone: (409) 899-8785

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: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A

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

1	06/14/2006	(481601)
2	11/20/2006	(516947)
3	02/14/2007	(535192)
4	12/27/2007	(612022)
5	10/15/2008	(705448)
6	08/18/2010	(849613)
7	03/14/2011	(902039)

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
WASTE MANAGEMENT OF
TEXAS, INC.
RN100218676**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2011-0658-AIR-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 Waste Management of Texas, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 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 a municipal solid waste landfill at 1000 Kohlenberg Road in New Braunfels, Comal County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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 March 20, 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 Eight Hundred Seventy-Five Dollars (\$1,875) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Five Hundred Dollars (\$1,500) of the administrative penalty and Three Hundred Seventy-Five Dollars (\$375) 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 recognizes that on March 4, 2011, the Respondent submitted the permit compliance certification ("PCC") for the August 3, 2009 through August 2, 2010 certification period.
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 Respondent 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 Site, the Respondent is alleged to have failed to submit a PCC within 30 days after the end of the August 3, 2009 through August 2, 2010, certification period, in violation of 30 TEX. ADMIN. CODE § 122.146(2), Federal Operating Permit No. O-2373, General Operating Permit No. 517, Site-wide Requirements No. (b)(2), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on March 7 and 8, 2011. Specifically, the PCC was due September 1, 2010, but was not submitted until March 4, 2011.

III. DENIALS

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

IV. ORDERING PROVISIONS

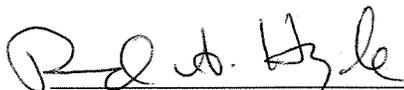
1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations 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: Waste Management of Texas, Inc., Docket No. 2011-0658-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against 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.
4. 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.
5. 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

8/30/11
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.


Signature

7-11-2011
Date

Steve Jacobs
Name (Printed or typed)

Authorized Representative of
Waste Management of Texas, Inc.

Director of Disposal 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.