

Executive Summary – Enforcement Matter – Case No. 37080
Alvin Cloud
RN105159453
Docket No. 2011-0189-MSW-E

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
MSW

Small Business:
N/A

Location(s) Where Violation(s) Occurred:
6105 Avenue L, Santa Fe, Galveston County

Type of Operation:
residential property

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	\$1,706.40 (2009-0135-MLM-E; referred for collection)
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: September 16, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed:	\$5,160
Amount Deferred for Expedited Settlement:	N/A
Amount Deferred for Financial Inability to Pay:	N/A
Total Paid to General Revenue:	\$0
Total Due to General Revenue:	\$5,160

Compliance History Classifications:

Person/CN – Average
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Alvin Cloud
RN105159453

Docket No. 2011-0189-MSW-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: November 5, 2010; February 7, 2011
Date(s) of NOV(s): N/A
Date(s) of NOE(s): December 29, 2010; March 7, 2011

Violation Information

1. Failed to prevent the dumping or disposal of municipal solid waste ("MSW") without the written consent of the Commission and failed to comply with Default Order Docket No. 2009-0135-MLM-E [30 TEX. ADMIN. CODE § 330.15(c) and TCEQ Default Order Docket No. 2009-0135-MLM-E, Ordering Provisions Nos. 2.b. and 2.c.].
2. Failed to pay the outstanding administrative penalty for Account No. 23605124 [TEX. WATER CODE § 7.061, and TCEQ Default Order Docket No. 2009-0135-MLM-E, Ordering Provision No. 1]

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. Immediately:
 - a. Pay the outstanding administrative penalties for Account No. 23605124; and
 - b. Cease accepting and/or processing MSW at the Site.
2. Within 30 days, remove all MSW from the Site and dispose of it at an authorized facility.
3. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: May 31, 2011
Date(s) Green Card(s) Signed: June 2, 2011
Date(s) Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A

Contact Information

TCEQ Attorneys: Tammy L. Mitchell, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ Enforcement Coordinator: Kimberly Morales, Air Enforcement Section, (713) 422-8938

TCEQ Regional Contact: Nicole Bealle, Houston Regional Office, (713) 767-3500

Respondent: Alvin Cloud, 6105 Avenue L, Santa Fe, Texas 77510

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	3-Jan-2011	Screening	31-Jan-2011	EPA Due	
	PCW	9-May-2011				

RESPONDENT/FACILITY INFORMATION			
Respondent	Alvin Cloud		
Reg. Ent. Ref. No.	RN105159453		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37080	No. of Violations	2
Docket No.	2011-0189-MSW-E	Order Type	Findings
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Kimberly Morales
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$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	29.0% Enhancement	Subtotals 2, 3, & 7	\$1,160
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Notes: Enhancement for two NOVs with dissimilar violations and one agreed order without a denial of liability.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

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: \$81
 Approx. Cost of Compliance: \$1,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,160
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$5,160
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,160
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$5,160
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Screening Date 31-Jan-2011

Docket No. 2011-0189-MSW-E

PCW

Respondent Alvin Cloud

Policy Revision 2 (September 2002)

Case ID No. 37080

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105159453

Media [Statute] Municipal Solid Waste

Enf. Coordinator Kimberly Morales

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written 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	2	4%
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	1	25%
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) 29%

>> 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 two NOVs with dissimilar violations and one agreed order without a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 29%

Screening Date 31-Jan-2011

Docket No. 2011-0189-MSW-E

PCW

Respondent Alvin Cloud

Policy Revision 2 (September 2002)

Case ID No. 37080

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105159453

Media [Statute] Municipal Solid Waste

Enf. Coordinator Kimberly Morales

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 330.15(c) and Default Order Docket No. 2009-0135-MLM-E, Ordering Provisions Nos. 2.b. and 2.c.

Violation Description Failed to prevent the dumping or disposal of municipal solid waste ("MSW") without the written consent of the Commission and failed to comply with Default Order Docket No. 2009-0135-MLM-E. Specifically, Galveston County investigators documented during an investigation on November 5, 2010 that MSW including, but not limited to, shingles, treated lumber, ceramic tiles, metal siding, sheet glass, glass bottles, paint cans, an unmarked plastic drum, electrical components including a television and computer parts, carpet padding, used tires, a propane tank, vegetative debris, and synthetic material which appeared to be insulation or air filter material, was scattered throughout the site in at least seven locations.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> 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 4 348 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$4,000

Four quarterly events are recommended from the February 17, 2010 effective date of the Default Order to the January 31, 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 \$4,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$81

Violation Final Penalty Total \$5,160

This violation Final Assessed Penalty (adjusted for limits) \$5,160

Economic Benefit Worksheet

Respondent Alvin Cloud
Case ID No. 37080
Req. Ent. Reference No. RN105159453
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
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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	\$1,000	17-Feb-2010	30-Sep-2011	1.62	\$81	n/a	\$81
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 dispose of MSW located on the property. The Date Required is the effective date of the Default Order. The Final Date is the date that corrective actions are expected to be completed.

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

\$1,000

TOTAL

\$81

Screening Date 31-Jan-2011

Docket No. 2011-0189-MSW-E

PCW

Respondent Alvin Cloud

Policy Revision 2 (September 2002)

Case ID No. 37080

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105159453

Media [Statute] Municipal Solid Waste

Enf. Coordinator Kimberly Morales

Violation Number 2

Rule Cite(s) Tex. Water Code § 7.061 and Default Order Docket No. 2009-0135-MLM-E, Ordering Provisions No. 1

Violation Description Failed to pay the outstanding administrative penalty for Account No. 23605124.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Adjustment \$10,000

\$0

Violation Events

Number of Violation Events [] Number of violation days []

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

Violation Base Penalty \$0

No penalty is recommended because penalty and interest will be assessed at the next billing.

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 \$0

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0 Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent Alvin Cloud
Case ID No. 37080
Req. Ent. Reference No. RN105159453
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

There is no economic benefit associated with this violation.

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

Compliance History

Customer/Respondent/Owner-Operator: CN603156860 CLOUD, ALVIN Classification: AVERAGE Rating: 27.00
Regulated Entity: RN105159453 ALVIN CLOUD Classification: AVERAGE Site Rating: 27.00
ID Number(s):
Location: 6105 AVENUE L, SANTA FE, TX, 77510
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: January 19, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 19, 2006 to January 19, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Kimberly Morales Phone: (713) 422-8938

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.
Effective Date: 02/17/2010 ADMINORDER 2009-0135-MLM-E
Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter B 111.201
30 TAC Chapter 330, SubChapter A 330.15(c)
5C THSC Chapter 382 382.085(b)
Description: Failed to prevent the unauthorized burning of approximately 40 cubic yards of material and the disposal of municipal solid waste.
- 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 06/26/2007 (560862)
2 02/07/2008 (613415)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 02/05/2007 (541058)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter B 111.201
Description: No person may cause, suffer, allow or permit any outdoor burning within the State of Texas.
Date: 09/28/2007 (594133)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter B 111.201
Description: 30 TAC 111.201 - no person may cause, suffer, allow or permit any outdoor burning within the State of Texas.
- 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
ALVIN CLOUD;
RN105159453**

**§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2011-0189-MSW-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Alvin Cloud ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns residential property located at 6105 Avenue L in Santa Fe, Galveston County, Texas (the "Site"). The Site involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on November 5, 2010, a Galveston County Air Pollution Control Investigator documented that Respondent failed to prevent the dumping or disposal of MSW without the written consent of the Commission and failed to comply with Default Order Docket No. 2009-0135-MLM-E. Specifically, shingles, treated lumber, ceramic tiles, metal siding, sheet glass, glass bottles, paint cans, an unmarked plastic drum, electrical components, carpet padding, used tires, a propane tank, vegetative debris, and synthetic material was located at the Site.
3. During a record review conducted on February 7, 2011, a TCEQ Central Office investigator documented that Respondent failed to pay the outstanding administrative penalty for Account No. 23605124.
4. Respondent received notice of the violation in Finding of Fact No. 2 on or about January 3, 2011. Respondent received notice of the violation in Finding of Fact No. 3 on or about March 12, 2011.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Alvin Cloud" (the "EDPRP") in the TCEQ Chief Clerk's office on May 31, 2011.

6. By letter dated May 31, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on June 2, 2011, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to prevent the dumping or disposal of MSW without the written consent of the Commission and failed to comply with Default Order Docket No. 2009-0135-MLM-E, in violation of 30 TEX. ADMIN. CODE § 330.15(c) and TCEQ Default Order Docket No. 2009-0135-MLM-E, Ordering Provisions Nos. 2.b. and 2.c.
3. As evidenced by Finding of Fact No. 3, Respondent failed to pay the outstanding administrative penalty for Account No. 23605124, in violation of TEX. WATER CODE § 7.061 and TCEQ Default Order Docket No. 2009-0135-MLM-E, Ordering Provision No. 1.
4. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of five thousand one hundred sixty dollars (\$5,160.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of five thousand one hundred sixty dollars (\$5,160.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Alvin Cloud; Docket No. 2011-0189-MSW-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

3. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Respondent shall:
 - i. Pay the outstanding administrative penalties for Account No. 23605124, in accordance with TEX. WATER CODE § 7.061 and TCEQ Default Order Docket No. 2009-0135-MLM-E, Ordering Provision No. 1.; and
 - ii. Cease accepting or processing any waste at the Site, in accordance with 30 TEX. ADMIN. CODE § 330.15(c) and TCEQ Default Order Docket No. 2009-0135-MLM-E, Ordering Provision No. 2.a.ii.
 - b. Within 30 days after the effective date of this Order, Respondent shall remove all of the MSW from the Site and dispose of it at an authorized facility, in accordance with 30 TEX. ADMIN. CODE ch. 330 and TCEQ Default Order Docket No. 2009-0135-MLM-E, Ordering Provision No. 2.b.
 - c. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.d., below, to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b.
 - d. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, 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 certifications and supporting 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:

Program Manager
Air and Water Pollution Services Division
Galveston County Health District
P.O. Box 939
La Marque, Texas 77568

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this 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.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by 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.

8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF TAMMY L. MITCHELL

STATE OF TEXAS

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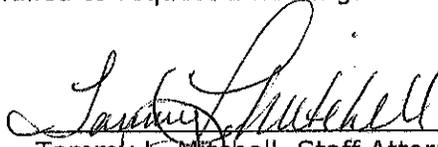
COUNTY OF TRAVIS

"My name is Tammy L. Mitchell. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the 'Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Alvin Cloud' (the 'EDPRP') was filed in the TCEQ Chief Clerk's office on May 31, 2011.

The EDPRP was mailed to Respondent's last known address on May 31, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt 'green card,' Respondent received notice of the EDPRP on June 2, 2011, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



Tammy L. Mitchell, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 17th day of August, A.D. 2011.



Notary Signature

