

Executive Summary – Enforcement Matter – Case No. 41353

City of Port Aransas

RN102503646

Docket No. 2011-0512-MLM-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM – PST, MSW

Small Business:

No

Location(s) Where Violation(s) Occurred:

Port Aransas Citizens Collection Station, Ross Avenue, Port Aransas, Nueces County

Type of Operation:

Used oil collection center and an unauthorized solid waste citizen's collection station with one aboveground storage tank ("AST")

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: October 7, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$13,925

Amount Deferred for Expedited Settlement: \$2,785

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$11,140

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 - Average by Default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

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City of Port Aransas

RN102503646

Docket No. 2011-0512-MLM-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: January 7, 2011

Date(s) of NOE(s): March 9, 2011

Violation Information

1. Failed to demonstrate concurrence with the transfer of used oil filters from the transporter to the registered storage facility or processor using properly completed bills of lading ("BOLs"). Specifically, the BOL dated February 10, 2009 did not have the correct name and address of the station and lacked the generator and registered storage facility or processor printed name and signature. The BOL dated December 9, 2010 did not have the correct name and address of the station and had no information for the designated facility, and the transporter and designated facility did not acknowledge receipt properly [30 TEX. ADMIN. CODE § 328.25(a) and TEX. HEALTH & SAFETY CODE § 371.105].
2. Failed to register with the agency an AST in existence on or after September 1, 1989 [30 TEX. ADMIN. CODE § 334.127(a)(1)].
3. Failed to obtain a permit, registration, or other authorization prior to conducting storage, processing, or disposal of municipal solid waste ("MSW") at the Facility. Specifically, the Respondent was conducting storage, processing, and disposal of approximately 12,737 cubic yards of vegetative material, brush, concrete, creosote pilings and antifreeze without adhering to the limitations for a citizens' collection station or obtaining a permit or other authorization from the TCEQ or providing notification to the Executive Director 90 days prior to engaging in these activities [30 TEX. ADMIN. CODE §§ 330.7, 330.9, and 330.11].
4. Failed to obtain a development permit prior to commencing physical construction of an enclosed structure over a closed MSW landfill. Specifically, one enclosed building utilized for used oil storage was built over a closed landfill [30 TEX. ADMIN. CODE § 330.954].
5. Failed to complete the information pertaining to generator name, address, telephone number, and registration number on scrap tire manifests. Specifically, the Respondent did not include the correct name and address of the station on scrap tire manifests dated July 7, 2009, July 27, 2009, August 5, 2009, August 24, 2009, September 29, 2009, October 12, 2009, and November 20, 2009 [30 TEX. ADMIN. CODE § 328.58(a)].
6. Failed to obtain the completed manifests from the transporter within 60 days after the scrap tires or tire pieces were transported off-site [30 TEX. ADMIN. CODE § 328.58(d)].

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7. Failed to notify the TCEQ of the transporter's failure to return manifests within three months of transporting tires off-site [30 TEX. ADMIN. CODE § 328.58(e)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that the Respondent submitted an AST registration form on April 20, 2011.

Technical Requirements:

The Order will require the Respondent to:

- a. Immediately, cease disposing of any additional MSW at the Facility; and
- b. Within 30 days:
 - i. Correct all incomplete used oil filter BOLs and scrap tire manifests to contain all required information;
 - ii. Develop and implement procedures to ensure that all BOLs and scrap tire manifests are properly completed and contain all required information, respectively;
 - iii. Submit an administratively complete development permit application for existing structures built over the closed MSW landfill; and
- c. Within 30 days, begin operating the citizens' collection station in accordance with 30 TEX. ADMIN. CODE ch. 330 including, but not limited to, submitting a completed notice of intent to operate a citizens' collection station and a TCEQ Core Data Form.

Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the notices of intent within 30 days after the date of such requests or by any other deadline specified in writing; and
- d. Remove all accumulated MSW from the Facility and dispose of it at an authorized facility according to the following schedule:
 - i. Within 30 days, remove 3,000 cubic yards of unauthorized MSW from the Facility to an authorized facility;
 - ii. Within 60 days, remove an additional 3,000 cubic yards of unauthorized MSW from the Facility to an authorized facility;
 - iii. Within 90 days, remove an additional 3,000 cubic yards of unauthorized MSW from the Facility to an authorized facility;

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City of Port Aransas

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iv. Within 120 days, remove an additional 3,000 cubic yards of unauthorized MSW from the Facility to an authorized facility;

v. Within 150 days, remove all remaining unauthorized MSW from the Facility to an authorized facility; and

e. Within 45 days, submit written certification demonstrating compliance with Ordering Provisions a. through d.i. Every 30 days thereafter, submit written certification and include a report stating the total weight of MSW removed from the Facility during the previous 30 days and detailed supporting documentation demonstrating compliance with Ordering Provisions d.ii. through d.v.

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: Brianna Carlson, Enforcement Division, Enforcement Team 7, MC R-14, (361) 825-3420; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

TCEQ SEP Coordinator: N/A

Respondent: The Honorable Keith McMullin, Mayor, City of Port Aransas, 710 West Avenue A, Port Aransas, Texas 78373-4128

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	18-Mar-2011	EPA Due	
	PCW	31-Mar-2011				

RESPONDENT/FACILITY INFORMATION			
Respondent	City of Port Aransas		
Reg. Ent. Ref. No.	RN102503646		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	41353	No. of Violations	5
Docket No.	2011-0512-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	Yes
Multi-Media	Petroleum Storage Tank/Used Oil Filter	Enf. Coordinator	Brianna Carlson
		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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes

Culpability Enhancement **Subtotal 4**

Notes

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

Economic Benefit Enhancement* **Subtotal 6**

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

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 18-Mar-2011

Docket No. 2011-0512-MLM-E

PCW

Respondent City of Port Aransas

Policy Revision 2 (September 2002)

Case ID No. 41353

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102503646

Media [Statute] Municipal Solid Waste

Enf. Coordinator Brianna Carlson

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	1	2%
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%

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) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with dissimilar violations.

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

Screening Date 18-Mar-2011

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PCW

Respondent City of Port Aransas

Policy Revision 2 (September 2002)

Case ID No. 41353

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102503646

Media [Statute] Municipal Solid Waste

Enf. Coordinator Brianna Carlson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.127(a)(1)

Violation Description Failed to register with the agency an aboveground storage tank ("AST") in existence on or after September 1, 1989.

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			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 70 Number of violation days

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

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the January 7, 2011 investigation.

Good Faith Efforts to Comply

10.0% Reduction

\$100

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

Notes The Respondent came into compliance on April 20, 2011.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$920

This violation Final Assessed Penalty (adjusted for limits) \$920

Economic Benefit Worksheet

Respondent City of Port Aransas
Case ID No. 41353
Req. Ent. Reference No. RN102503646
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)	\$100	7-Jan-2011	20-Apr-2011	0.28	\$0	\$2	\$2
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

Estimated cost to accurately prepare and submit an AST registration. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$2

Screening Date 18-Mar-2011

Docket No. 2011-0512-MLM-E

PCW

Respondent City of Port Aransas

Policy Revision 2 (September 2002)

Case ID No. 41353

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102503646

Media [Statute] Municipal Solid Waste

Enf. Coordinator Brianna Carlson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 330.7, 330.9, and 330.11

Violation Description

Failed to obtain a permit, registration, or other authorization prior to conducting storage, processing, or disposal of MSW at the Facility. Specifically, the Respondent was conducting storage, processing, and disposal of approximately 12,737 cubic yards of vegetative material, brush, concrete, creosote pilings and antifreeze without adhering to the limitations for a citizens' collection station or obtaining a permit or other authorization from the TCEQ or providing notification to the Executive Director 90 days prior to engaging in these activities.

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			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 Number of violation days 70

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,000

Three monthly events are recommended from the January 7, 2011 investigation date to the March 18, 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 \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7,640 Violation Final Penalty Total \$3,060

This violation Final Assessed Penalty (adjusted for limits) \$3,060

Economic Benefit Worksheet

Respondent City of Port Arkansas
Case ID No. 41353
Req. Ent. Reference No. RN102503646
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	\$159,031	7-Jan-2011	13-Dec-2011	0.93	\$7,407	n/a	\$7,407
Permit Costs	\$5,000	7-Jan-2011	13-Dec-2011	0.93	\$233	n/a	\$233
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and dispose of the waste at an authorized facility and to obtain a permit or other authorization to operate the Facility. 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

\$164,031

TOTAL

\$7,640

Screening Date 18-Mar-2011

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PCW

Respondent City of Port Aransas

Policy Revision 2 (September 2002)

Case ID No. 41353

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102503646

Media [Statute] Municipal Solid Waste

Enf. Coordinator Brianna Carlson

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 330.954

Violation Description

Failed to obtain a development permit prior to commencing physical construction of an enclosed structure over a closed MSW landfill. Specifically, one enclosed building utilized for used oil storage was built over a closed landfill.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

70 Number of violation days

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

Violation Base Penalty \$3,000

Three monthly events are recommended from the January 7, 2011 investigation date to the March 18, 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 \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$233

Violation Final Penalty Total \$3,060

This violation Final Assessed Penalty (adjusted for limits) \$3,060

Economic Benefit Worksheet

Respondent City of Port Aransas
Case ID No. 41353
Reg. Ent. Reference No. RN102503646
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				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)	\$5,000	7-Jan-2011	13-Dec-2011	0.93	\$233	n/a	\$233

Notes for DELAYED costs

Estimated cost to submit an administratively complete application for existing structures built over closed MSW landfills. 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

\$5,000

TOTAL

\$233

Screening Date 18-Mar-2011

Docket No. 2011-0512-MLM-E

PCW

Respondent City of Port Aransas

Policy Revision 2 (September 2002)

Case ID No. 41353

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102503646

Media [Statute] Municipal Solid Waste

Enf. Coordinator Brianna Carlson

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 328.58(a)

Violation Description

Failed to complete the information pertaining to generator name, address, telephone number, and registration number on scrap tire manifests. Specifically, the Respondent did not include the correct name and address of the station on scrap tire manifests dated July 7, 2009, July 27, 2009, August 5, 2009, August 24, 2009, September 29, 2009, October 12, 2009, and November 20, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
		X	

Percent 5%

Matrix Notes

30% to 70% of the rule requirement was not met.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 7

7 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$3,500

Seven single events are recommended (one per manifest).

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 \$3,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$9

Violation Final Penalty Total \$3,570

This violation Final Assessed Penalty (adjusted for limits) \$3,570

Economic Benefit Worksheet

Respondent City of Port Aransas
Case ID No. 41353
Req. Ent. Reference No. RN102503646
Media Municipal Solid Waste
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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	\$200	7-Jan-2011	13-Dec-2011	0.93	\$9	n/a	\$9
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to correct and submit properly completed manifests and to develop and implement procedures to ensure the manifests are properly completed. 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

\$200

TOTAL

\$9

Screening Date 18-Mar-2011

Docket No. 2011-0512-MLM-E

PCW

Respondent City of Port Aransas

Policy Revision 2 (September 2002)

Case ID No. 41353

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102503646

Media [Statute] Municipal Solid Waste

Enf. Coordinator Brianna Carlson

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 328.58(d) and (e)

Violation Description

Failed to obtain the completed manifests from the transporter within 60 days after the scrap tires or tire pieces were transported off-site and to notify the TCEQ of the transporter's failure to return manifests within three months of transporting tires off site, as documented during an investigation conducted on January 7, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

70 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,000

Three monthly events are recommended from the January 7, 2011 investigation date to the March 18, 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 \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23

Violation Final Penalty Total \$3,060

This violation Final Assessed Penalty (adjusted for limits) \$3,060

Economic Benefit Worksheet

Respondent City of Port Aransas
Case ID No. 41353
Reg. Ent. Reference No. RN102503646
Media Municipal Solid Waste
Violation No. 5

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	\$250	7-Jan-2011	13-Dec-2011	0.93	\$12	n/a	\$12
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)	\$250	7-Jan-2011	13-Dec-2011	0.93	\$12	n/a	\$12

Notes for DELAYED costs

Estimated cost to submit completed manifests to the TCEQ and develop and implement procedures to ensure that manifests are properly completed and returned to the Respondent and that notification is provided to the TCEQ for all manifests that are not properly completed and returned to the Respondent by the transporters. The date required is the investigation date and the final date is the estimated of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$23



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	14-Mar-2011	Screening	18-Mar-2011	EPA Due	
	PCW	27-Apr-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Port Aransas
Reg. Ent. Ref. No.	RN102503646
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	1
Enf./Case ID No.	41353	Order Type	1660
Docket No.	2011-0512-MLM-E	Government/Non-Profit	Yes
Media Program(s)	Used Oil Filter	Enf. Coordinator	Brianna Carlson
Multi-Media	Municipal Solid Waste/Petroleum Storage Tank	EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$250
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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	2.0% Enhancement	Subtotals 2, 3, & 7	\$5
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Notes: Enhancement for one NOV with dissimilar violations.

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: \$9; Approx. Cost of Compliance: \$200; *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$255
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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: \$255

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$255
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DEFERRAL	20.0% Reduction	Adjustment	-\$51
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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	\$204
------------------------	-------

Screening Date 18-Mar-2011

Docket No. 2011-0512-MLM-E

PCW

Respondent City of Port Aransas

Policy Revision 2 (September 2002)

Case ID No. 41353

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102503646

Media [Statute] Used Oil Filter

Enf. Coordinator Brianna Carlson

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	1	2%
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%

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) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with dissimilar violations.

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

Screening Date 18-Mar-2011

Docket No. 2011-0512-MLM-E

PCW

Respondent City of Port Aransas

Policy Revision 2 (September 2002)

Case ID No. 41353

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102503646

Media [Statute] Used Oil Filter

Enf. Coordinator Brianna Carlson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 328.25(a) and Tex. Health & Safety Code § 371.105

Violation Description

Failed to demonstrate concurrence with the transfer of used oil filters from the transporter to the registered storage facility or processor using properly completed bills of lading ("BOLs"). Specifically, the BOL dated February 10, 2009 did not have the correct name and address of the station and lacked the generator and registered storage facility or processor printed name and signature. The BOL dated December 9, 2010 did not have the correct name and address of the station and had no information for the designated facility, and the transporter and designated facility did not acknowledge receipt properly.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
		x		5%

Matrix Notes

30% to 70% of the rule requirement was not met.

Adjustment \$2,375

\$125

Violation Events

Number of Violation Events 2 Number of violation days 2

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$250

Two single events are recommended (one event per BOL).

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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$9

Violation Final Penalty Total \$255

This violation Final Assessed Penalty (adjusted for limits) \$255

Economic Benefit Worksheet

Respondent City of Port Aransas
Case ID No. 41353
Req. Ent. Reference No. RN102503646
Media Used Oil Filter
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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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	\$200	7-Jan-2011	13-Dec-2011	0.93	\$9	n/a	\$9
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to correct and submit properly completed BOLs and to develop and implement procedures to ensure the BOLs are properly completed. 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

\$200

TOTAL

\$9

Compliance History

Customer/Respondent/Owner-Operator: CN600770747 City of Port Aransas Classification: AVERAGE Rating: 1.75
Regulated Entity: RN102503646 Port Aransas Citizens Collection Station Classification: AVERAGE Site Rating: 3.01
BY DEFAULT

ID Number(s): MUNICIPAL SOLID WASTE DISPOSAL PERMIT 597
AIR NEW SOURCE PERMITS ACCOUNT NUMBER NE0103H
Location: AT ROSS AVENUE IN PORT ARANSAS, NUECES COUNTY
TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: March 18, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 18, 2006 to March 18, 2011

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

Name: Brianna Carlson Phone: 361/825-3420

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 03/09/2011 (881317)
- 2 01/25/2011 (884837)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 01/27/2011 (884837)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THSC Chapter 382 382.085(b)

Description: Failure to comply with the General Prohibition requirements concerning outdoor burning. Specifically, the City of Port Aransas failed to meet the criteria for authorization by storing a mulch pile, approximately 1,375 cubic yards in size, capable of igniting spontaneously, without the written permission of the executive director. In addition, the mulch pile began smoldering on November 30, 2010.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF PORT ARANSAS
RN102503646**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2011-0512-MLM-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 City of Port Aransas ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 317 and TEX. WATER CODE chs. 7 and 26. 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 used oil collection center and an unauthorized solid waste citizens' collection station with one aboveground storage tank ("AST") at Ross Avenue in Port Aransas, Nueces County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste ("MSW") and used oil as defined in TEX. HEALTH & SAFETY CODE chs. 361 and 371. The Facility's one AST is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
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 14, 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 Thirteen Thousand Nine Hundred Twenty-Five Dollars (\$13,925) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eleven Thousand One Hundred Forty Dollars (\$11,140) of the administrative penalty and Two Thousand Seven Hundred Eighty-Five Dollars (\$2,785) 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 the Respondent submitted an AST registration form on April 20, 2011.
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 Facility, the Respondent is alleged to have:

1. Failed to demonstrate concurrence with the transfer of used oil filters from the transporter to the registered storage facility or processor using properly completed bills of lading ("BOLs"), in violation of 30 TEX. ADMIN. CODE § 328.25(a) and TEX. HEALTH & SAFETY CODE § 371.105, as documented during an investigation conducted on January 7, 2011. Specifically, the BOL dated February 10, 2009 did not have the correct name and address of the station and lacked the generator and registered storage facility or processor printed name and signature. The BOL dated December 9, 2010 did not have the correct name and address of the station and had no information for the designated facility, and the transporter and designated facility did not acknowledge receipt properly.

2. Failed to register with the agency an AST in existence on or after September 1, 1989, in violation of 30 TEX. ADMIN. CODE § 334.127(a)(1), as documented during an investigation conducted on January 7, 2011.
3. Failed to obtain a permit, registration, or other authorization prior to conducting storage, processing, or disposal MSW of at the Facility, in violation of 30 TEX. ADMIN. CODE §§ 330.7, 330.9, and 330.11, as documented during an investigation conducted on January 7, 2011. Specifically, the Respondent was conducting storage, processing, and disposal of approximately 12,737 cubic yards of vegetative material, brush, concrete, creosote pilings and antifreeze without adhering to the limitations for a citizens' collection station or obtaining a permit or other authorization from the TCEQ or providing notification to the executive director 90 days prior to engaging in these activities.
4. Failed to obtain a development permit prior to commencing physical construction of an enclosed structure over a closed MSW landfill, in violation of 30 TEX. ADMIN. CODE § 330.954, as documented during an investigation conducted on January 7, 2011. Specifically, one enclosed building utilized for used oil storage was built over a closed landfill.
5. Failed to complete the information pertaining to generator name, address, telephone number, and registration number on scrap tire manifests, in violation of 30 TEX. ADMIN. CODE § 328.58(a), as documented during an investigation conducted on January 7, 2011. Specifically, the Respondent did not include the correct name and address of the station on scrap tire manifests dated July 7, 2009, July 27, 2009, August 5, 2009, August 24, 2009, September 29, 2009, October 12, 2009, and November 20, 2009.
6. Failed to obtain the completed manifests from the transporter within 60 days after the scrap tires or tire pieces were transported off-site, as documented during an investigation conducted on January 7, 2011, in violation of 30 TEX. ADMIN. CODE § 328.58(d), as documented during an investigation conducted on January 7, 2011.
7. Failed to notify the TCEQ of the transporter's failure to return manifests within three months of transporting tires off-site, as documented during an investigation conducted on January 7, 2011, in violation of 30 TEX. ADMIN. CODE § 328.58(e), as documented during an investigation conducted on January 7, 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: City of Port Aransas, Docket No. 2011-0512-MLM-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. Immediately upon the effective date of this Agreed Order, cease disposing of any additional MSW at the Facility; and
 - b. Within 30 days after the effective date of this Agreed Order:
 - i. Correct all incomplete used oil filter BOLs and scrap tire manifests to contain all required information, in accordance with 30 TEX. ADMIN. CODE §§ 328.25(a) and 328.58(a), respectively. The corrected BOLs and manifests 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
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

- ii. Develop and implement procedures to ensure that all BOLs and scrap tire manifests are properly completed and contain all required information, in accordance with 30 TEX. ADMIN. CODE §§ 328.25(a) and 328.58(a), respectively;

- iii. Submit an administratively complete development permit application for existing structures built over the closed MSW landfill, in accordance with 30 TEX. ADMIN. CODE § 330.959; and
- c. Within 30 days after the effective date of this Agreed Order, begin operating the citizens' collection station in accordance with 30 TEX. ADMIN. CODE ch. 330 including, but not limited to, submitting a completed notice of intent to operate a citizens' collection station and a TCEQ Core Data Form to:

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

Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the notices of intent within 30 days after the date of such requests or by any other deadline specified in writing; and

- d. Remove all accumulated MSW from the Facility and dispose of it at an authorized facility according to the following schedule:
 - i. Within 30 days from the effective date of this Agreed Order, remove 3,000 cubic yards of unauthorized MSW from the Facility to an authorized facility;
 - ii. Within 60 days from the effective date of this Agreed Order, remove an additional 3,000 cubic yards of unauthorized MSW from the Facility to an authorized facility;
 - iii. Within 90 days from the effective date of this Agreed Order, remove an additional 3,000 cubic yards of unauthorized MSW from the Facility to an authorized facility;
 - iv. Within 120 days from the effective date of this Agreed Order, remove an additional 3,000 cubic yards of unauthorized MSW from the Facility to an authorized facility;
 - v. Within 150 days from the effective date of this Agreed Order, remove all remaining unauthorized MSW from the Facility to an authorized facility; and
- e. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.d.i. Every 30 days thereafter, submit written certification as described below and include a report stating the total weight of MSW removed from the Facility during the previous 30 days and detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.d.ii. through

2.d.v. 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
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

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 the Facility 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

D. J. Hyde for R. Hyde
For the Executive Director

10-25-11
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.

Keith McMullin
Signature

8.19.11
Date

Keith M^c Mullin
Name (Printed or typed)
Authorized Representative of
City of Port Aransas

Mayor
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.