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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-1549-MLM-E **TCEQ ID:** RN100212570 **CASE NO.:** 40428
RESPONDENT NAME: City of Midland

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Midland Municipal Solid Waste Landfill, 7904 South Garden City Highway, Midland, Midland County</p> <p>TYPE OF OPERATION: Municipal solid waste ("MSW") landfill</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 21, 2011. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732 TCEQ Enforcement Coordinator: Ms. Allison Fischer, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-2574; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Morris Williams, Jr., Director of Solid Waste, City of Midland, 300 North Loraine Street, Midland, Texas 79701 Ms. Jill Reed, Assistant Director of Utilities, City of Midland, 300 North Loraine Street, Midland, Texas 79701 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: August 20, 2010</p> <p>Date of NOV/NOE Relating to this Case: August 25, 2010 (NOE)</p> <p>Background Facts: This was a records review.</p> <p>WASTE</p> <p>Failed to submit an application for renewal no later than the expiration date of a Standard Air Permit for MSW Landfill Facilities and Transfer Stations and continued to operate the Site after the permit expired. Specifically, the Respondent failed to renew Standard Permit No. 41395 before the permit expiration date of June 8, 2009 [30 TEX. ADMIN. CODE §§ 116.110(a) and 330.987(c) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p> <p>AIR</p> <p>Failed to submit a semi-annual deviation report when a violation was known to have occurred. Specifically, the Respondent failed to include the deviation in the May 21, 2009 through November 21, 2009 reporting period regarding the operation of the landfill without authorization [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(A) and (B), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit No. 0-1993/MSW General Operating Permit No. 517, Site-wide Requirements (b)(1) and (2)].</p>	<p>Total Assessed: \$11,200</p> <p>Total Deferred: \$2,240 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$8,960</p> <p>Total Paid to General Revenue: \$0</p> <p>Compliance History Classifications: Person/CN - Average Site/RN - Average</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:</p> <p>a. On July 8, 2010, obtained permit authorization, Standard Permit No. 92571, to operate the Site; and</p> <p>b. On August 2, 2010, reported operating the landfill without authorization as a deviation in the June 22, 2009 through June 21, 2010 Annual Permit Compliance Certification reporting period.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)</p>

Additional ID No(s): Air Account MLo369E

Attachment A
Docket Number: 2010-1549-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Midland

Payable Penalty Amount: Eight Thousand Nine Hundred Sixty Dollars
(\$8,960)

SEP Amount: Eight Thousand Nine Hundred Sixty Dollars
(\$8,960)

Type of SEP: Pre-approved

Third-Party Recipient: Texas Association of Resource Conservation and
Development Areas, Inc. ("RC&D")-Abandoned Tire
Clean-Up

Location of SEP: Midland County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")** to be used for the *Abandoned Tire Cleanups Program* as set forth in an agreement between the Third-Party Recipient and TCEQ. The Third-Party Recipient shall coordinate with local city and county government officials and private entities to clean up sites where tires have been disposed of illegally, or to conduct tire collection events where residents will be able to drop off tires for proper disposal or recycling. Eligible tire cleanup sites will be limited to areas where a responsible party cannot be identified or where there is no preexisting obligation to clean up the site by the owner or government and where reasonable efforts have been made to prevent the dumping. The SEP Offset Amount will be used for the direct cost of collection and disposal of tires and debris. Any SEP Offset Amount remaining after completion of this project may, upon approval of the Executive Director, be applied to another approved RC&D project. The SEP will be administered in accordance with federal, state, and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to make this contribution and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient named above and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
Attention: SEP
1716 Briarcrest Drive, Suite 507
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP amount, the Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	30-Aug-2010	Screening	7-Sep-2010	EPA Due	22-May-2011
	PCW	7-Sep-2010				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Midland				
Reg. Ent. Ref. No.	RN100212570				
Facility/Site Region	7-Midland	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	40428	No. of Violations	2
Docket No.	2010-1549-MLM-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	Yes
Multi-Media	Municipal Solid Waste	Enf. Coordinator	Allison Fischer
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$14,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **5.0%** Enhancement **Subtotals 2, 3, & 7** **\$700**

Notes: Enhancement for one same/similar NOV.

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** **\$3,500**

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

Total EB Amounts: \$286
 Approx. Cost of Compliance: \$5,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$11,200**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$11,200**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$11,200**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$2,240**

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

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$8,960**

Screening Date 7-Sep-2010
Respondent City of Midland
Case ID No. 40428
Reg. Ent. Reference No. RN100212570
Media [Statute] Air
Enf. Coordinator Allison Fischer

Docket No. 2010-1549-MLM-E

PCW

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

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>)	1	5%
	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) 5%

>> **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 same/similar NOV.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 7-Sep-2010
Respondent City of Midland
Case ID No. 40428
Reg. Ent. Reference No. RN100212570
Media [Statute] Air
Enf. Coordinator Allison Fischer

Docket No. 2010-1549-MLM-E

PCW

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 116.110(a) and 330.987(c) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)

Violation Description Failed to submit an application for renewal no later than the expiration date of a Standard Air Permit for Municipal Solid Waste Landfill Facilities and Transfer Stations and continued to operate the Site after the permit expired. Specifically, the Respondent failed to renew Standard Permit No. 41395 before the permit expiration date of June 8, 2009, as documented during an investigation conducted on August 20, 2010.

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 13 395 Number of violation days

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

Violation Base Penalty \$13,000

Thirteen monthly events are recommended from the permit expiration date of June 8, 2009 to the date of compliance, July 8, 2010.

Good Faith Efforts to Comply

25.0% Reduction

\$3,250

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

Notes: The Respondent returned to compliance on July 8, 2010, and the NOE is dated August 25, 2010.

Violation Subtotal \$9,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$271

Violation Final Penalty Total \$10,400

This violation Final Assessed Penalty (adjusted for limits) \$10,400

Economic Benefit Worksheet

Respondent City of Midland
Case ID No. 40428
Reg. Ent. Reference No. RN100212570
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	\$5,000	8-Jun-2009	8-Jul-2010	1.08	\$271	n/a	\$271
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for the preparation and submittal of a new permit application. Date required is the date the permit expired. 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

\$5,000

TOTAL

\$271

Screening Date 7-Sep-2010
Respondent City of Midland
Case ID No. 40428
Reg. Ent. Reference No. RN100212570
Media [Statute] Air
Enf. Coordinator Allison Fischer

Docket No. 2010-1549-MLM-E

PCW

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

Violation Number
Rule Cite(s)

30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(A) and (B), Tex. Health & Safety Code § 382.085(b), and Federal Operating Permit No. 0-1993/Municipal Solid Waste General Operating Permit No. 517, Site-wide Requirements (b)(1) and (2)

Violation Description

Failed to submit a semi-annual deviation report when a violation was known to have occurred, as documented during an investigation conducted on August 20, 2010. Specifically, the Respondent failed to include the deviation in the May 21, 2009 through November 21, 2009 reporting period regarding the operation of the landfill without authorization.

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Percent

Matrix Notes

100% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>
N/A	<input type="text"/>	(mark with x)

Notes

The Respondent returned to compliance on August 2, 2010, and the NOE is dated August 25, 2010.

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent City of Midland
Case ID No. 40428
Reg. Ent. Reference No. RN100212570
Media Air
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$500	21-Dec-2009	2-Aug-2010	0.61	\$15	n/a	\$15
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 ensure the proper preparation and submittal of deviation reports. Date required is the date the report should have been submitted. Final date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$15

Compliance History Report

Customer/Respondent/Owner-Operator: CN600246813 City Of Midland Classification: AVERAGE Rating: 2.37
Regulated Entity: RN100212570 CITY OF MIDLAND MUNICIPAL SOLID WASTE LANDFILL Classification: AVERAGE Site Rating: 0.38

ID Number(s): AIR OPERATING PERMITS ACCOUNT NUMBER ML0369E
AIR OPERATING PERMITS PERMIT 1993
MUNICIPAL SOLID WASTE DISPOSAL PERMIT 1605B
AIR NEW SOURCE PERMITS REGISTRATION 92571
AIR NEW SOURCE PERMITS ACCOUNT NUMBER ML0369E
AIR NEW SOURCE PERMITS AFS NUM 4832900058
AIR EMISSIONS INVENTORY ACCOUNT NUMBER ML0369E

Location: 7904 S GARDEN CITY HWY, MIDLAND, TX, 79706

TCEQ Region: REGION 07 - MIDLAND

Date Compliance History Prepared: September 08, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 08, 2005 to September 08, 2010

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

Name: Kirk Schoppe Phone: (512) 239-0489

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 | 01/10/2006 | (438304) |
| 2 | 08/21/2006 | (509511) |
| 3 | 11/21/2006 | (515999) |
| 4 | 08/07/2007 | (571375) |
| 5 | 08/28/2008 | (701064) |
| 6 | 08/24/2009 | (766425) |
| 7 | 08/25/2010 | (849416) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 08/20/2010 (849416) CN600246813
- Self Report? NO Classification: Moderate
- Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(C)
5C THSC Chapter 382 382.085(b)
- Description: Failure to submit a complete DR within 30 days after the end of the compliance period. The revised DR was submitted more than 30 days after the end of the compliance period which is a alleged violation of 30 TAC 122.145(2)(C).
- 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 THE
CITY OF MIDLAND
RN100212570**

**§ BEFORE THE
§ TEXAS COMMISSION ON
§ ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2010-1549-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 the City of Midland ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 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 ("MSW") landfill at 7904 South Garden City Highway in Midland, Midland County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12) and involves the management of MSW as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 30, 2010.
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 Eleven Thousand Two Hundred Dollars (\$11,200) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Two Thousand Two Hundred Forty Dollars (\$2,240) 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. Eight Thousand Nine Hundred Sixty Dollars (\$8,960) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project.
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 has implemented the following corrective measures at the Site:
 - a. On July 8, 2010, obtained permit authorization, Standard Permit No. 92571, to operate the Site; and
 - b. On August 2, 2010, reported operating the landfill without authorization as a deviation in the June 22, 2009 through June 21, 2010 Annual Permit Compliance Certification reporting 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:

1. Failed to submit an application for renewal no later than the expiration date of a Standard Air Permit for MSW Landfill Facilities and Transfer Stations and continued to operate the Site after the permit expired, in violation of 30 TEX. ADMIN. CODE §§ 116.110(a) and 330.987(c) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during an investigation conducted on August 20, 2010.

Specifically, the Respondent failed to renew Standard Permit No. 41395 before the permit expiration date of June 8, 2009.

2. Failed to submit a semi-annual deviation report when a violation was known to have occurred, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(A) and (B), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit No. 0-1993/MSW General Operating Permit No. 517, Site-wide Requirements (b)(1) and (2), as documented during an investigation conducted on August 20, 2010. Specifically, the Respondent failed to include the deviation in the May 21, 2009 through November 21, 2009 reporting period regarding the operation of the landfill without authorization.

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 Midland, Docket No. 2010-1549-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. The Respondent shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Eight Thousand Nine Hundred Sixty Dollars (\$8,960) of the assessed administrative penalty shall be offset with the condition that the Respondent implements the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
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 Site operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a

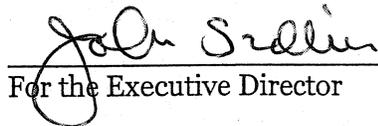
violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

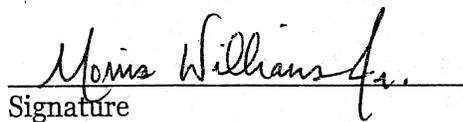
Date 2/24/2011

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

Date 01/07/11

MORRIS WILLIAMS JR.

Name (Printed or typed)
Authorized Representative of
City of Midland

DIRECTOR OF SOLID WASTE

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.

Attachment A

Docket Number: 2010-1549-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Midland

Payable Penalty Amount: Eight Thousand Nine Hundred Sixty Dollars
(\$8,960)

SEP Amount: Eight Thousand Nine Hundred Sixty Dollars
(\$8,960)

Type of SEP: Pre-approved

Third-Party Recipient: Texas Association of Resource Conservation and
Development Areas, Inc. ("RC&D")-Abandoned Tire
Clean-Up

Location of SEP: Midland County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")** to be used for the *Abandoned Tire Cleanups Program* as set forth in an agreement between the Third-Party Recipient and TCEQ. The Third-Party Recipient shall coordinate with local city and county government officials and private entities to clean up sites where tires have been disposed of illegally, or to conduct tire collection events where residents will be able to drop off tires for proper disposal or recycling. Eligible tire cleanup sites will be limited to areas where a responsible party cannot be identified or where there is no preexisting obligation to clean up the site by the owner or government and where reasonable efforts have been made to prevent the dumping. The SEP Offset Amount will be used for the direct cost of collection and disposal of tires and debris. Any SEP Offset Amount remaining after completion of this project may, upon approval of the Executive Director, be applied to another approved RC&D project. The SEP will be administered in accordance with federal, state, and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to make this contribution and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient named above and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
Attention: SEP
1716 Briarcrest Drive, Suite 507
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP amount, the Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

City of Midland
Agreed Order - Attachment A

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.