

Executive Summary – Enforcement Matter – Case No. 41026

Cherokee Water Company

RN105948533

Docket No. 2011-0131-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Gregg County Burn Site, located 300 feet south of the Cherokee Trail North and Highway 149 intersection on Cherokee Trail North in Longview, Gregg County, Texas

Type of Operation:

Property management company that operated a yard waste collection and mulching site

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: April 29, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$4,985

Amount Deferred for Expedited Settlement: \$997

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$3,988

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 - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41026
Cherokee Water Company
RN105948533
Docket No. 2011-0131-AIR-E

Investigation Information

Complaint Date(s): December 13, 2010

Complaint Information: A complaint was received alleging the Respondent was conducting outdoor burning.

Date(s) of Investigation: December 16, 2010

Date(s) of NOE(s): January 5, 2011

Violation Information

Failed to comply with the general prohibition of outdoor burning within the state of Texas. Specifically, plastic bags, pipe insulation, a discarded jacket, polyvinyl chloride pipe and treated lumber were burned without authorization at the Site [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that on December 16, 2010, the Respondent ceased the collection and mulching operations at the Site in order to prevent the reoccurrence of outdoor burning.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Mr. Raymond Marlow, P.G., Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8785; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

TCEQ SEP Coordinator: N/A

Respondent: Mr. Mike Toon, Board of Directors President, Cherokee Water Company, NK-20, Lake Cherokee, Longview, Texas 75603

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	10-Jan-2011	Screening	18-Jan-2011	EPA Due	
	PCW	18-Jan-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Cherokee Water Company
Reg. Ent. Ref. No.	RN105948533
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	41026	No. of Violations	1	
Docket No.	2011-0131-AIR-E	Order Type	1660	
Media Program(s)	Air	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Raymond Marlow, P.G.	
		EC's Team	Enforcement Team 5	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **5.0%** Enhancement **Subtotals 2, 3, & 7** **\$50**

Notes: Enhancement for one same/similar notice of violation.

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** **\$250**

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

Total EB Amounts \$4,185
Approx. Cost of Compliance \$4,185
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$800**

OTHER FACTORS AS JUSTICE MAY REQUIRE **523.1%** **Adjustment** **\$4,185**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement for recovery of avoided costs associated with the violation.

Final Penalty Amount **\$4,985**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$4,985**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$997**

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 **\$3,988**

Screening Date 18-Jan-2011

Docket No. 2011-0131-AIR-E

PCW

Respondent Cherokee Water Company

Policy Revision 2 (September 2002)

Case ID No. 41026

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105948533

Media [Statute] Air

Enf. Coordinator Raymond Marlow, P.G.

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	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)

N/A

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 notice of violation.

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

Screening Date 18-Jan-2011
Respondent Cherokee Water Company
Case ID No. 41026
Reg. Ent. Reference No. RN105948533
Media [Statute] Air
Enf. Coordinator Raymond Marlow, P.G.

Docket No. 2011-0131-AIR-E

PCW

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

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to comply with the general prohibition of outdoor burning within the state of Texas. Specifically, plastic bags, pipe insulation, a discarded jacket, polyvinyl chloride pipe and treated lumber were burned without authorization at the Site, as documented during an investigation conducted on December 16, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or the environment.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 1

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.

Good Faith Efforts to Comply

25.0% Reduction
Before NOV NOV to EDPRP/Settlement Offer

\$250

Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes: The Respondent completed corrective actions on December 16, 2010, following the December 16, 2010 investigation.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4,185

Violation Final Penalty Total \$4,985

This violation Final Assessed Penalty (adjusted for limits) \$4,985

Economic Benefit Worksheet

Respondent Cherokee Water Company
Case ID No. 41026
Reg. Ent. Reference No. RN105948533
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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]	\$4,185	16-Dec-2010	16-Dec-2010	0.00	\$0	\$4,185	\$4,185
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to collect and dispose of approximately 200 cubic yards of waste (that was burned) at a permitted municipal solid waste landfill. The Respondent permanently ceased collection and mulching services at its property preventing reoccurrence of the violation in the future. Date required and the final date is the date of the investigation.

Approx. Cost of Compliance

\$4,185

TOTAL

\$4,185

Compliance History

Customer/Respondent/Owner-Operator: CN600835193 Cherokee Water Company Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105948533 GREGG COUNTY BURN SITE Classification: N/A Site Rating: N/A
ID Number(s): CN600835193 RN105948533
Location: LOCATED 300 FEET SOUTH OF THE CHEROKEE TRAIL NORTH AND HIGHWAY 149 INTERSECTION ON CHEROKEE TRAIL NORTH, LONGVIEW, TX, 75603
TCEQ Region: REGION 05 - TYLER
Date Compliance History Prepared: January 18, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 10, 2006 to January 10, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Raymond Marlow, P.G. Phone: (512) 899-8785

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating date: N/A Repeat Violator: N/A (PWS)

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.)
N/A 09/17/2010 (858116)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 07/08/2010 (828084)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201
30 TAC Chapter 111, SubChapter B 111.209(5)
5C THSC Chapter 382 382.085(b)

Description: Failure to comply with outdoor burning rule 30 TAC 111.201 and 111.209(5).
During the complaint investigation, the investigators documented that Cherokee Water Company's NH Convenience Center site or Cherokee Water Company's Gregg County Burn Site in Longview, Texas was burning unauthorized materials such as metal, treated lumber and other items at a designated burn site on Lake Cherokee. Additionally, Gregg County has a population of 115,100, over the 50,000 person max allowed by 111.209(5).

- 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
CHEROKEE WATER COMPANY
RN105948533**

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§
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§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2011-0131-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Cherokee Water Company ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns a property management company that operated a yard waste collection and mulching site located 300 feet south of the Cherokee Trail North and Highway 149 intersection on Cherokee Trail North in Longview, Gregg County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 10, 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 Four Thousand Nine Hundred Eighty-Five Dollars (\$4,985) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Nine Hundred Eighty-Eight Dollars (\$3,988) of the administrative penalty and Nine Hundred Ninety-Seven Dollars (\$997) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on December 16, 2010, the Respondent ceased the collection and mulching operations at the Site in order to prevent the reoccurrence of outdoor burning.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to comply with the general prohibition of outdoor burning within the state of Texas, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on December 16, 2010. Specifically, plastic bags, pipe insulation, a discarded jacket, polyvinyl chloride pipe and treated lumber were burned without authorization at the Site.

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: Cherokee Water Company, Docket No. 2011-0131-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Cherokee Water Company
DOCKET NO. 2011-0131-AIR-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Szell
For the Executive Director

5/12/2011
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.

Mike Toon
Signature

5-4-11
Date

MIKE TOON
Name (Printed or typed)
Authorized Representative of
Cherokee Water Company

Board of Director-President
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.