

Executive Summary – Enforcement Matter – Case No. 37651
John Charles May, Edward Russell Leath, Christopher Atwood Leath,
Melissa May Leath, and Marilyn Louis Leath-Dziuk
RN10560276

Docket Nos. 2009-0728-MSW-E and 2009-1811-MSW-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

MSW

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

2400 Blk. E. Loop 254, Ranger, Eastland County

Type of Operation:

Unauthorized municipal solid waste disposal site

Other Significant Matters:

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: In the proposed agreed order, respondent John Charles May is assessed the penalty and the remaining respondents (the "Leath Respondents") are responsible for the corrective actions. All of the respondents were owners at the time of the violation. Currently, only the Leath Respondents own the site.

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

Texas Register Publication Date: July 22, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$5,250

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$175

Total Due to General Revenue: \$5,075

Payment Plan: 35 payments of \$145 each

SEP Conditional Offset: N/A

Name of SEP: N/A

Compliance History Classifications:

Person/CN – Not yet rated

Site/RN – Average by Default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): August 10, 2008
Complaint Information: The complaint alleged that there was a “perpetual unauthorized dumpsite” at the site.

Date(s) of Investigation: September 3, 2008, February 17, 2009 and April 6, 2009

Date(s) of NOV(s): September 25, 2008

Date(s) of NOE(s): April 29, 2009; November 10, 2009

Violation Information

Failed to prevent the unauthorized disposal of municipal solid waste (approx. 14,750 cubic yards of MSW including furniture, tires, paper, metal, and construction and demolition wastes) [30 TEX. ADMIN. CODE §§ 330.7(a), and 330.15(a) and (c)].

Corrective Actions/Technical Requirements

Technical Requirements:

1. Within 365 days, remove all MSW from the site and dispose of it at an authorized facility.
2. Within 120 days, and every 120 days thereafter until all municipal solid waste has been removed from the site, provide the Commission with progress reports detailing the waste removal activities at the site during the previous 120-day period.
3. Within 380 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: July 13, 2009; November 10, 2009

Date Answer(s) Filed: July 30, 2009; December 28, 2009

SOAH Referral Date: August 31, 2009 and January 21, 2010

Hearing Date(s):
Preliminary hearing: October 29, 2009, March 25, 2010 and May 27, 2010
Evidentiary hearing: April 6, 2011 (continued indefinitely)

Settlement Date: July 1, 2011

Contact Information

TCEQ Attorneys: Jennifer Cook, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Clinton Sims, Waste Enforcement Section, (512) 239- 6933

TCEQ Regional Contact: Mike Taylor, Abilene Regional Office, (325) 698-6125

Executive Summary – Enforcement Matter – Case No. 37651
John Charles May, Edward Russell Leath, Christopher Atwood Leath,
Melissa May Leath, and Marilyn Louis Leath-Dziuk
RN10560276

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Docket Nos. 2009-0728-MSW-E and 2009-1811-MSW-E

Respondents: John Charles May, 5250 Honeymoon Bay Road, Freeland, WA 98249
Edward Russell Leath, 1514 S. 2nd Street, Floresville, Texas 78114
Marilyn Louis Leath-Dziuk, 1514 S. 2nd Street, Floresville, Texas 78114
Melissa May Leath, 415 Mebane Street, San Antonio, Texas 78223
Christopher Atwood Leath, 102 Westhaven Street, Floresville, Texas 78114

Respondents' Attorney: Louis T. Rosenberg and Nohl Patric Bryant, Louis T. Rosenberg, P.C., De
Mazieres Building, 322 Martinez Street, San Antonio, TX 78205

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	4-May-2009			
	PCW	19-May-2009	Screening	5-May-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	John Charles May, Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath, and Marilyn Louis Leath-Dziuk				
Reg. Ent. Ref. No.	RN105602726				
Facility/Site Region	3-Abilene	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	37651	No. of Violations	1		
Docket No.	2009-0728-MSW-E; 2009-1811-MSW-E	Order Type	Findings		
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Clinton Sims		
		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	\$5,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$250
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Notes	Enhancement for one NOV with same or similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondents do not meet the culpability criteria.
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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	\$9,282	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$233,655	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,250
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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	
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Final Penalty Amount	\$5,250
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,250
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY	\$5,250
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Screening Date 5-May-2009

Docket No. 2009-0728-MSW-E; 2009-1811-MSW-E

PCW

Respondent John Charles May, Edward Russell Leath, Christopher At

Policy Revision 2 (September 2002)

Case ID No. 37651

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105602726

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written 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)**

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with same or similar violations.

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

Screening Date 5-May-2009 **Docket No.** 2009-0728-MSW-E; 2009-1811-MSW-E **PCW**
Respondent John Charles May, Edward Russell Leath, Christopher Atwood Lee *Policy Revision 2 (September 2002)*
Case ID No. 37651 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105602726
Media [Statute] Municipal Solid Waste
Enf. Coordinator Clinton Sims

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="50%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

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" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

Notes

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 John Charles May, Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath, and Marilyn Louis Leath
Case ID No. 37651
Reg. Ent. Reference No. RN105602726
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)				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	\$233,655	6-Apr-2009	21-Jan-2010	0.79	\$9,282	n/a	\$9,282
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and properly dispose of all municipal solid waste at the Site. The Date Required is the investigation date and the Final Date is the expected 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

\$233,655

TOTAL

\$9,282

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603404948	MAY, JOHN CHARLES	Classification:	Rating:
Regulated Entity:	RN105602726	JOHN CHARLES MAY	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01

ID Number(s):
 Location: 2400 BLK E LOOP 254 RANGER, EASTLAND COUNTY
 TCEQ Region: REGION 03 - ABILENE
 Date Compliance History Prepared: May 15, 2009
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: May 15, 2004 to May 15, 2009
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Clinton Sims Phone: 239 - 6933

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: 9/1/2008 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 04/30/2009 (741584)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 Date: 09/25/2008 (699919)
 Self Report? NO Classification: Major
 Citation: 30 TAC Chapter 330, SubChapter A 330.15
 Description: Failure to dispose of wastes at a properly permitted facility. Wastes were disposed on the property including tires, furniture, metal, wood, shingles and paper goods.
 - 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

Compliance History

Customer/Respondent/Owner-Operator: CN603577693 Edward Russell Leath Classification: Rating:
 Classification: Site Rating:
 Regulated Entity: RN105602726 UNAUTHORIZED DUMPING 2400
 BLK E LOOP 254 RANGER

ID Number(s):
 Location: 2400 BLK E LOOP 254 RANGER, EASTLAND COUNTY
 TCEQ Region: REGION 03 -ABILENE
 Date Compliance History Prepared: November 04, 2009
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: November 04, 2004 to November 04, 2009
 TCEQ Staff Member to Contact for Information Regarding this Compliance History:
 Name: Clinton Sims Phone: 512-239-6933

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 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

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	4/30/2009	(741584)
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- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

	Date: 9/25/2008	(699919)
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Self Report? No Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15

Description: Failure to dispose of wastes at a properly permitted facility. Wastes were disposed on the property including tires, furniture, metal, wood, shingles and paper goods.
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas
N/A

Compliance History

Customer/Respondent/Owner-Operator: CN603577701 Christopher Atwood Leath Classification: Rating:
 Classification: Site Rating:
 Regulated Entity: RN105602726 UNAUTHORIZED DUMPING 2400
 BLK E LOOP 254 RANGER

ID Number(s):
 Location: 2400 BLK E LOOP 254 RANGER, EASTLAND COUNTY
 TCEQ Region: REGION 03 -ABILENE
 Date Compliance History Prepared: November 04, 2009
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: November 04, 2004 to November 04, 2009
 TCEQ Staff Member to Contact for Information Regarding this Compliance History:
 Name: Clinton Sims Phone: 512-239-6933

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 | 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 |

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 4/30/2009 (741584)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 Date: 9/25/2008 (699919)

Self Report? No

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15

Description: Failure to dispose of wastes at a properly permitted facility. Wastes were disposed on the property including tires, furniture, metal, wood, shingles and paper goods.

F. Environmental audits.
 N/A

G. Type of environmental management systems (EMSs).
 N/A

H. Voluntary on-site compliance
 N/A

I. Participation in a voluntary pollution reduction program.
 N/A

J. Early compliance.
 N/A

Sites Outside of Texas
 N/A

Compliance History

Customer/Respondent/Owner-Operator: CN603577719 Melissa May Leath Classification: Rating:
 Classification: Site Rating:
 Regulated Entity: RN105602726 UNAUTHORIZED DUMPING 2400
 BLK E LOOP 254 RANGER

ID Number(s):
 Location: 2400 BLK E LOOP 254 RANGER, EASTLAND COUNTY
 TCEQ Region: REGION 03 -ABILENE
 Date Compliance History Prepared: November 04, 2009
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: November 04, 2004 to November 04, 2009
 TCEQ Staff Member to Contact for Information Regarding this Compliance History:
 Name: Clinton Sims Phone: 512-239-6933

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 | 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 |

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 4/30/2009 (741584)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 Date: 9/25/2008 (699919)

Self Report? No

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15

Description: Failure to dispose of wastes at a properly permitted facility. Wastes were disposed on the property including tires, furniture, metal, wood, shingles and paper goods.

F. Environmental audits.
 N/A

G. Type of environmental management systems (EMSs).
 N/A

H. Voluntary on-site compliance
 N/A

I. Participation in a voluntary pollution reduction program.
 N/A

J. Early compliance.
 N/A

Sites Outside of Texas
 N/A

Compliance History

Customer/Respondent/Owner-Operator: CN603577727 Marilyn Louis Leath-Dziuk Classification: Rating:
 Classification: Site Rating:
 Regulated Entity: RN105602726 UNAUTHORIZED DUMPING 2400
 BLK E LOOP 254 RANGER

ID Number(s):
 Location: 2400 BLK E LOOP 254 RANGER, EASTLAND COUNTY
 TCEQ Region: REGION 03 -ABILENE
 Date Compliance History Prepared: November 04, 2009
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: November 04, 2004 to November 04, 2009
 TCEQ Staff Member to Contact for Information Regarding this Compliance History:
 Name: Clinton Sims Phone: 512-239-6933

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 | 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 |

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 | 4/30/2009 | (741584) |
|---|-----------|----------|
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | |
|-----------------|----------|
| Date: 9/25/2008 | (699919) |
|-----------------|----------|
- Self Report? No Classification: Major
- Citation: 30 TAC Chapter 330, SubChapter A 330.15
- Description: Failure to dispose of wastes at a properly permitted facility. Wastes were disposed on the property including tires, furniture, metal, wood, shingles and paper goods.
- F. Environmental audits.
 N/A
- G. Type of environmental management systems (EMSs).
 N/A
- H. Voluntary on-site compliance
 N/A
- I. Participation in a voluntary pollution reduction program.
 N/A
- J. Early compliance.
 N/A
- Sites Outside of Texas
 N/A

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JOHN CHARLES MAY,
EDWARD RUSSELL LEATH,
CHRISTOPHER ATWOOD LEATH,
MELISSA MAY LEATH, AND
MARILYN LOUIS LEATH-DZIUK;
RN105602726**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NOS. 2009-0728-MSW-E AND 2009-1811-MSW-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding John Charles May ("John May"), Edward Russell Leath ("Edward Leath"), Christopher Atwood Leath ("Christopher Leath"), Melissa May Leath ("Melissa Leath") and Marilyn Louis Leath-Dziuk ("Marilyn Leath-Dziuk") (collectively "Respondents") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, Respondents Christopher Leath, Melissa Leath and Marilyn Leath-Dziuk, represented by Louis T. Rosenberg of the law firm Law Offices of Louis T. Rosenberg, P.C., and Respondents John May and Edward Leath, representing themselves, presented this Agreed Order to the Commission.

Respondents understand that they have certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondents agree to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

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

FINDINGS OF FACT

1. At the time of the violations, Respondents owned an unauthorized municipal solid waste disposal site located at 2400 Blk. E. Loop 254 in Ranger, Eastland County, Texas (the "Site"). The Site involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.

2. John May is no longer an owner of the Site. The remaining respondents - Edward Leath, Christopher Leath, Melissa Leath and Marilyn Leath-Dziuk (collectively "the Leath Respondents") - are the current owners of the Site.
3. During an investigation conducted on April 6, 2009, a TCEQ Abilene Regional Office investigator documented that Respondents failed to prevent the unauthorized disposal of municipal solid waste. Specifically, approximately 14,750 cubic yards of municipal solid waste, including furniture, tires, paper, metal, and construction and demolition wastes, were disposed at the Site.
4. Respondent John May received notice of the violation on or about May 4, 2009. The Leath Respondents received notice of the violation on or about November 15, 2009.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Respondents failed to prevent the unauthorized disposal of municipal solid waste in violation of 30 TEX. ADMIN. CODE §§ 330.7(a), and 330.15(a) and (c).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of five thousand two hundred fifty dollars (\$5,250.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. John May paid one hundred seventy-five dollars (\$175.00) of the administrative penalty. John May shall pay the remaining amount of five thousand seventy-five dollars (\$5,075.00) of the administrative penalty in thirty-five (35) monthly payments of one hundred forty-five dollars (\$145.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If John May fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, John May's failure to meet the payment schedule of this Agreed Order constitutes the failure by all Respondents' to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

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

1. Respondent John May is assessed an administrative penalty as set forth in Conclusion of Law No. 4, above, for violations of state statutes and rules of the

TCEQ. The payment of this administrative penalty and Respondents compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: John Charles May, Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath and Marilyn Louis Leath-Dziuk, Docket Nos. 2009-0728-MSW-E and 2009-1811-MSW-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

2. The Leath Respondents shall undertake the following technical requirements:
 - a. Within 365 days after the effective date of this Agreed Order, the Leath Respondents shall remove all municipal solid waste from the Site and dispose of the waste at an authorized facility.
 - b. Within 120 days after the effective date of this Agreed Order, and every 120 days thereafter until all municipal solid waste has been removed from the Site, the Leath Respondents shall provide the commission with progress reports detailing the waste removal activities at the Site during the previous 120-day period. The progress reports shall include detailed supporting documentation, including photographs, receipts, and/or other records to demonstrate progress, which shall be sent to the addresses below in Ordering Provision No. 2.d.
 - c. Within 380 days after the effective date of this Agreed Order, the Leath Respondents shall submit written certification as described in Ordering Provision No. 2.d., below, and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 2.a.
 - d. The certification required by these Ordering Provisions shall be notarized by a State of Texas Notary Public and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The progress reports, written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Mike Taylor, Waste Section Manager
Texas Commission on Environmental Quality
Abilene Regional Office
1977 Industrial Boulevard
Abilene, Texas 78711-3087

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondents.
5. If Respondents fail 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, Respondents' failure to comply is not a violation of this Agreed Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
8. 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.
9. 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"),

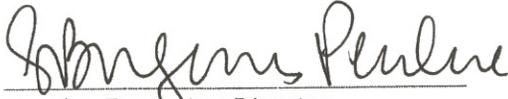
or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued 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.

10. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondents, or three days after the date on which the Commission mails notice of this Agreed Order to Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

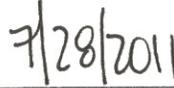
SIGNATURE PAGE 1 of 5

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director



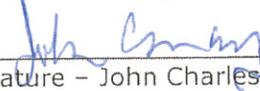
Date

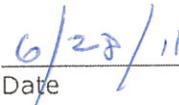
I, the undersigned, have read and understand the attached Agreed Order and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.


Signature - John Charles May


Date

SIGNATURE PAGE 2 of 5

I, the undersigned, have read and understand the attached Agreed Order 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 in this order and/or failure to timely pay the penalty amount may result in:

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- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.


Signature - Edward Russell Leath

06-24-11
Date

John Charles May, Edward Russell Leath, Christopher Atwood Leath,
Melissa May Leath and Marilyn Louis Leath-Dziuk
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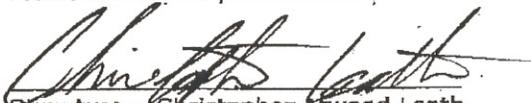
SIGNATURE PAGE 3 of 5

I, the undersigned, have read and understand the attached Agreed Order 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.

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- Greater scrutiny of any permit applications;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.


Signature - Christopher Atwood Leath

7-1-11
Date

John Charles May, Edward Russell Leath, Christopher Atwood Leath,
Melissa May Leath and Marilyn Louis Leath-Dziuk
Docket Nos. 2009-0728-MSW-E and 2009-1811-MSW-E
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SIGNATURE PAGE 4 of 5

I, the undersigned, have read and understand the attached Agreed Order 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature - Melissa May Leath

06/28/11

Date

John Charles Hoy, Edward Russell Leath, Christopher Atwood Leath,
Nebesa Hoy Leath and Marilyn Louis Leath-Dziuk
Docket Nos. 2009-0728-MSW-E and 2009-1511-MSW-E
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SIGNATURE PAGE 5 of 5

I, the undersigned, have read and understand the attached Agreed Order 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 in this order and/or failure to timely pay the penalty amount may result in:

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- Greater scrutiny of any permit applications;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

Marilyn Louis Leath-Dziuk *June 28, 2011*
 Signature - Marilyn-Louis Leath-Dziuk Date
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