

**Executive Summary – Enforcement Matter – Case No. 41535**

**City of Victoria**

**RN100212968**

**Docket No. 2011-0626-MSW-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MSW

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

City of Victoria Landfill, 18545 Farm-to-Market Road 1686, Victoria, Victoria County

**Type of Operation:**

Municipal solid waste (“MSW”) type I landfill

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** November 18, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$47,700

**Amount Deferred for Expedited Settlement:** \$9,540

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$38,160

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 41535**  
**City of Victoria**  
**RN100212968**  
**Docket No. 2011-0626-MSW-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** February 23, 2011

**Date(s) of NOE(s):** April 7, 2011

***Violation Information***

1. Failed to ensure that the concentration of methane gas does not exceed 5% by volume in monitoring points, probes, subsurface soils, or other matrices at the Facility boundary. Specifically, methane concentrations in gas monitoring probes (“GMPs”) were reported at 38% in GMP-5, 47.5% in GMP-5A, 12.8% in GMP-6, 27% in GMP-8A, 14% in GMP-9, 52.9% in GMP-11, 53.2% in GMP-12, and 33.2% in GMP-13 on December 17, 2010 [30 TEX. ADMIN. CODE § 330.371(a)(2) and MSW Permit No. 1522A, Site Operating Plan (“SOP”) Sec. 4.15 Control of Landfill Gas].

2. Failed to immediately take all necessary steps to ensure protection of human health and notify the Executive Director, local and county officials, emergency officials, and the public when methane exceedances are detected. Specifically, the Respondent did not notify appropriate officials of the methane exceedances on August 28, 2009 in GMP-6, March 17, 2008 in GMP-8A, June 28, 2010 in GMP-11 and GMP-12, and December 20, 2010 in GMP-9 [30 TEX. ADMIN. CODE § 330.371(c)(1) and MSW Permit No. 1522A, Site Development Plan Attachment 14, Landfill Gas Management Plan, Notification Procedures].

3. Failed to implement a remediation plan within 60 days of detection of methane gas releases. Specifically, the Respondent failed to implement a Landfill Gas Remediation Plan in response to the December 18, 2007 and August 28, 2009 quarterly monitoring events that detected methane gas releases [30 TEX. ADMIN. CODE § 330.371(c)(3) and MSW Permit No. 1522A, SOP Sec. 4.15 Control of Landfill Gas].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

a. Within 30 days:

i. Implement additional oversight and monitoring to restore the effectiveness of the landfill gas control system and certify that methane gas concentration levels are compliant with regulatory levels;

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**City of Victoria**

**RN100212968**

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- ii. Develop and implement procedures to ensure immediate steps are taken when methane exceedances are detected and notify the Executive Director, local and county officials, emergency officials, and the public; and
  - iii. Develop, implement, and submit a remediation plan to address the methane gas releases.
- b. Within 45 days, submit written certification demonstrating compliance.

***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:** Clinton Sims, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-6933; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.

**TCEQ SEP Coordinator:** N/A

**Respondent:** The Honorable Will Armstrong, Mayor, City of Victoria, P.O. Box 1758, Victoria, Texas 77902

Charmelle Garrett, City Manager, City of Victoria, P.O. Box 1758, Victoria, Texas 77902

**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	25-Apr-2011	<b>Screening</b>	28-Apr-2011	<b>EPA Due</b>	
	<b>PCW</b>	4-May-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of Victoria
<b>Reg. Ent. Ref. No.</b>	RN100212968
<b>Facility/Site Region</b>	14-Corpus Christi
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>				
<b>Enf./Case ID No.</b>	41535	<b>No. of Violations</b>	3	
<b>Docket No.</b>	2011-0626-MSW-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	Yes	
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Clinton Sims	
		<b>EC's Team</b>	Enforcement Team 6	
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$45,000**

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History** **6.0%** Enhancement **Subtotals 2, 3, & 7** **\$2,700**

Notes: Enhancement for one NOV with same/similar violations and one NOV with dissimilar violations; and reduction for one Notice of Intent.

**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** **\$0**

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

Total EB Amounts \$787  
Approx. Cost of Compliance \$6,900  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$47,700**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$47,700**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$47,700**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$9,540**

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** **\$38,160**

**Screening Date** 28-Apr-2011

**Docket No.** 2011-0626-MSW-E

**PCW**

**Respondent** City of Victoria

Policy Revision 2 (September 2002)

**Case ID No.** 41535

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN100212968

**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 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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	1	-1%
	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)** 6%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with same/similar violations and one NOV with dissimilar violations; and reduction for one Notice of Intent.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 6%

Screening Date 28-Apr-2011

Docket No. 2011-0626-MSW-E

PCW

Respondent City of Victoria

Policy Revision 2 (September 2002)

Case ID No. 41535

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100212968

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 330.371(a)(2) and Municipal Solid Waste ("MSW") Permit No. 1522A, Site Operating Plan ("SOP") Sec. 4.15 Control of Landfill Gas

Violation Description Failed to ensure that the concentration of methane gas does not exceed 5% by volume in monitoring points, probes, subsurface soils, or other matrices at the Facility boundary. Specifically, methane concentrations in gas monitoring probes (GMPs) were reported at 38% in GMP-5, 47.5% in GMP-5A, 12.8% in GMP-6, 27% in GMP-8A, 14% in GMP-9, 52.9% in GMP-11, 53.2% in GMP-12, and 33.2% in GMP-13 on December 17, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 5

132 Number of violation days

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$25,000

Five monthly events are recommended from the December 17, 2010 violation begin date to the April 28, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$25,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$241

Violation Final Penalty Total \$26,500

This violation Final Assessed Penalty (adjusted for limits) \$26,500

# Economic Benefit Worksheet

**Respondent** City of Victoria  
**Case ID No.** 41535  
**Reg. Ent. Reference No.** RN100212968  
**Media** Municipal Solid Waste  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$5,000	23-Feb-2011	10-Feb-2012	0.96	\$241	n/a	\$241
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 for additional oversight and monitoring to restore the effectiveness of the landfill gas control system and submit certification of compliance. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

**TOTAL**

\$241

Screening Date 28-Apr-2011

Docket No. 2011-0626-MSW-E

PCW

Respondent City of Victoria

Policy Revision 2 (September 2002)

Case ID No. 41535

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100212968

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 330.371(c)(1) and MSW Permit No. 1522A, Site Development Plan Attachment 14, Landfill Gas Management Plan, Notification Procedures

Violation Description

Failed to immediately take all necessary steps to ensure protection of human health and notify the Executive Director, local and county officials, emergency officials, and the public when methane exceedances are detected. Specifically, the Respondent did not notify appropriate officials of the methane exceedances on August 28, 2009 in GMP-6, March 17, 2008 in GMP-8A, June 28, 2010 in GMP-11 and GMP-12, and December 20, 2010 in GMP-9.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 4 64 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$10,000

Four single events (one for each exceedance) are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$10,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$498

Violation Final Penalty Total \$10,600

This violation Final Assessed Penalty (adjusted for limits) \$10,600

## Economic Benefit Worksheet

**Respondent** City of Victoria  
**Case ID No.** 41535  
**Reg. Ent. Reference No.** RN100212968  
**Media** Municipal Solid Waste  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	23-Feb-2011	10-Feb-2012	0.96	\$24	n/a	\$24
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement procedures to immediately take all necessary steps when methane exceedances are detected and to notify the Executive Director, local and county officials, emergency officials, and the public when methane exceedances were measured. 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]	\$400	16-May-2008	18-Feb-2011	3.68	\$74	\$400	\$474
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide notification (\$100 per notification) to the Executive Director, local and county officials, emergency officials, and the public when methane exceedances were measured. The Date Required is the date that the notification was due for the first methane exceedance and the Final Date is the date of the last methane exceedance.

Approx. Cost of Compliance

	\$900
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**TOTAL**

	\$498
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Screening Date 28-Apr-2011

Docket No. 2011-0626-MSW-E

PCW

Respondent City of Victoria

Policy Revision 2 (September 2002)

Case ID No. 41535

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100212968

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 330.371(c)(3) and MSW Permit No. 1522A, SOP Sec. 4.15 Control of Landfill Gas

Violation Description

Failed to implement a remediation plan within 60 days of detection of methane gas releases. Specifically, the Respondent failed to implement a Landfill Gas Remediation Plan in response to the December 18, 2007 and August 28, 2009 quarterly monitoring events that detected methane gas releases.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 2

64 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$10,000

Two quarterly events (one per quarterly monitoring event) are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$10,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$48

Violation Final Penalty Total \$10,600

This violation Final Assessed Penalty (adjusted for limits) \$10,600

# Economic Benefit Worksheet

**Respondent** City of Victoria  
**Case ID No.** 41535  
**Reg. Ent. Reference No.** RN100212968  
**Media** Municipal Solid Waste  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$1,000	23-Feb-2011	10-Feb-2012	0.96	\$48	n/a	\$48
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement procedures to ensure that a remediation plan is implemented within 60 days of detection of methane gas releases. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

**TOTAL**

\$48

# Compliance History

Customer/Respondent/Owner-Operator: CN600243257 City of Victoria Classification: AVERAGE Rating: 5.17  
 Regulated Entity: RN100212968 City of Victoria Landfill Classification: AVERAGE Site Rating: 2.14

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	VC0087R
	AIR OPERATING PERMITS	PERMIT	1451
	AIR NEW SOURCE PERMITS	AFS NUM	4846900033
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	VC0087R
	AIR NEW SOURCE PERMITS	REGISTRATION	81012
	MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	1522A
	STORMWATER	PERMIT	TXR05P661
	STORMWATER	PERMIT	TXR05X102
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	VC0087R

Location: 18545 FM RD 1686, VICTORIA, TX, 77905

TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: April 12, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 12, 2006 to April 12, 2011

TCEQ Staff Member to Contact for Additional 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 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	05/30/2007	(561504)
2	08/25/2008	(700331)
3	05/28/2009	(741712)
4	08/25/2009	(766599)
5	04/12/2010	(785038)
6	04/07/2011	(877084)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 12/11/2007 (600955)CN600243257  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter D 330.165(h)  
 Description: MSW Permit 1522A, Site Operating Plan PERMIT  
 Failure to maintain a daily cover application record on site readily available for inspection by commission representatives. During the investigation it was noted that Republic Waste Services (RWS) took over operation of the landfill on October 8, 2007, and that RWS has failed to maintain a daily cover application record.

Date: 04/22/2010 (785038) CN600243257  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter D 330.121  
 SOP, Section 4, Operational Procedures PERMIT  
 Description: Failure to meet the conditions of the SOP. The Operational Procedures require that the Landfill Manager be responsible for the cleanup of waste materials...along and within the right-of-way of all public access roads.. and that ..a log be maintained to document the procedure.

Date: 04/22/2010 (785038) CN600243257  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter I 330.371(a)(2)  
 SOP Sec 4.15 Control of LF Gas PERMIT  
 Description: Failure to ensure that the concentration of methane gas does not exceed 5% by volume in monitoring points, probes, subsurface soils, or other matrices at the facility boundary.

Date: 04/22/2010 (785038) CN600243257  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 330, SubChapter I 330.371(c)(1)  
 SDP Att 14 LFGMP Notification PERMIT  
 Description: Failure to immediately take all necessary steps to ensure protection of human health and notify the executive director, local and county officials, emergency officials, and the public if methane gas levels exceed the limits specified in subsection (a) of this section are detected.

Date: 04/22/2010 (785038) CN600243257  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 330, SubChapter I 330.371(c)(3)  
 SOP Sec 4.15 Control of LF Gas PERMIT  
 Description: Failure to implement a remediation plan within 60 days of detection for the methane gas releases. The plan shall describe the nature and extent of the problem and the proposed remedy.

F. Environmental audits.

03/12/2007 (556539)

Notice of Intent Date:

No DOV Associated

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF VICTORIA  
RN100212968**

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

## **AGREED ORDER DOCKET NO. 2011-0626-MSW-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Victoria ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 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") type I landfill at 18545 Farm-to-Market Road 1686 in Victoria, Victoria County, Texas (the "Facility").
2. The Facility involves or involved 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 April 12, 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 Forty-Seven Thousand Seven Hundred Dollars (\$47,700) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Thirty-Eight Thousand One

Hundred Sixty Dollars (\$38,160) of the administrative penalty and Nine Thousand Five Hundred Forty Dollars (\$9,540) 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 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.
10. 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.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to ensure that the concentration of methane gas does not exceed 5% by volume in monitoring points, probes, subsurface soils, or other matrices at the Facility boundary, in violation of 30 TEX. ADMIN. CODE § 330.371(a)(2) and MSW Permit No. 1522A, Site Operating Plan ("SOP") Sec. 4.15 Control of Landfill Gas, as documented during an investigation conducted on February 23, 2011. Specifically, methane concentrations in gas monitoring probes ("GMPs") were reported at 38% in GMP-5, 47.5% in GMP-5A, 12.8% in GMP-6, 27% in GMP-8A, 14% in GMP-9, 52.9% in GMP-11, 53.2% in GMP-12, and 33.2% in GMP-13 on December 17, 2010.
2. Failed to immediately take all necessary steps to ensure protection of human health and notify the Executive Director, local and county officials, emergency officials, and the public when methane exceedances are detected, in violation of 30 TEX. ADMIN. CODE § 330.371(c)(1) and MSW Permit No. 1522A, Site Development Plan Attachment 14, Landfill Gas Management Plan, Notification Procedures, as documented during an investigation conducted on February 23, 2011. Specifically, the Respondent did not notify appropriate officials of the methane exceedances on August 28, 2009 in GMP-6, March 17, 2008 in GMP-8A, June 28, 2010 in GMP-11 and GMP-12, and December 20, 2010 in GMP-9.

3. Failed to implement a remediation plan within 60 days of detection of methane gas releases, in violation of 30 TEX. ADMIN. CODE § 330.371(c)(3) and MSW Permit No. 1522A, SOP Sec. 4.15 Control of Landfill Gas, as documented during an investigation conducted on February 23, 2011. Specifically, the Respondent failed to implement a Landfill Gas Remediation Plan in response to the December 18, 2007 and August 28, 2009 quarterly monitoring events that detected methane gas releases.

### **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 Victoria, Docket No. 2011-0626-MSW-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order:
    - i. Implement additional oversight and monitoring to restore the effectiveness of the landfill gas control system and certify that methane gas concentration levels are compliant with regulatory levels, in accordance with 30 TEX. ADMIN. CODE § 330.371(a)(2) and MSW Permit No. 1522A, SOP Sec. 4.15 Control of Landfill Gas;
    - ii. Develop and implement procedures to ensure immediate steps are taken when methane exceedances are detected and notify the Executive Director, local and county officials, emergency officials, and the public, in accordance with 30 TEX. ADMIN. CODE § 330.371(c)(1) and MSW Permit No. 1522A, Site Development Plan Attachment 14, Landfill Gas Management Plan; and

- iii. Develop, implement, and submit a remediation plan to address the methane gas releases, in accordance with 30 TEX. ADMIN. CODE § 330.371(c)(3) and MSW Permit No. 1522A, SOP Sec. 4.15 Control of Landfill Gas to:

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

- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.iii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager  
Corpus Christi Regional Office  
Texas Commission on Environmental Quality  
6300 Ocean Drive, Suite 1200  
Corpus Christi, Texas 78412-5503

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to

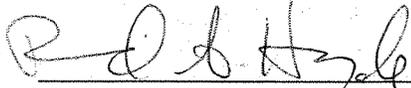
the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

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

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

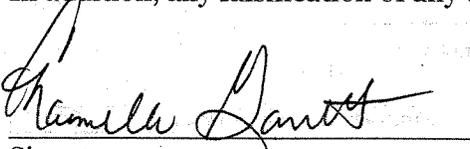
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\_\_\_\_\_  
Date

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.

  
\_\_\_\_\_  
Signature

10-5-11  
\_\_\_\_\_  
Date

Charmelle Garrett  
Name (Printed or typed)  
Authorized Representative of  
City of Victoria

City Manager  
\_\_\_\_\_  
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.