

Executive Summary – Enforcement Matter – Case No. 41827
Kevin Lokey dba Lokey Earth Moving
RN105791172
Docket No. 2011-0946-MSW-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Lokey Earth Moving, 3804 County Road 1200, Lubbock, Lubbock County

Type of Operation:

Municipal solid waste (“MSW”) recycling facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: December 30, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$68,845

Amount Deferred for Expedited Settlement: \$13,769

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$1,561

Total Due to General Revenue: \$0

Payment Plan: 35 payments of \$1,529 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41827
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RN105791172
Docket No. 2011-0946-MSW-E

Investigation Information

Complaint Date(s): April 14, 2011, April 15, 2011, and April 18, 2011

Complaint Information: Alleged illegal disposal of MSW at 3804 County Road 1200.

Date(s) of Investigation: April 20, 2011

Date(s) of NOE(s): June 2, 2011

Violation Information

1. Failed to limit storage of material to be recycled to the maximum amount specified on the Facility's notice of intent ("NOI") and prevent acceptance of material for recycling that is not listed on the NOI. Specifically, approximately 6,017 tons of unprocessed asphalt shingles and approximately 426,592 cubic yards ("cu. yds.") of unprocessed mixed construction and demolition material is being stored at the Facility which exceeds the 5,000 ton and 8,000 cu. yds. NOI storage limits, respectively. Additionally, computer and electronic equipment are being accepted for recycling which are materials not authorized in the current NOI [30 TEX. ADMIN. CODE § 328.5(b)].

2. Failed to recycle during each subsequent six-month period at least 50 % by weight or volume of each material accumulated at the beginning of the period. Specifically, the Respondent recycled less than 50% of the metal, concrete debris, wood, paper, cardboard, and sheetrock material at the Facility during the period from September 15, 2010 to March 15, 2011 [30 TEX. ADMIN. CODE § 328.4(b)(3)].

3. Failed to provide a revised, written cost estimate to close a facility which includes disposition of all processed and unprocessed material. Specifically, a revised closure cost estimate was not provided for unprocessed asphalt shingles and unprocessed mixed construction and demolition material at the Facility which exceeds the current NOI storage limits by approximately 1,017 tons and 418,592 cu. yds., respectively [30 TEX. ADMIN. CODE § 328.5(c)(2)(A)].

4. Failed to provide adequate financial assurance ("FA") for combustible material stored outdoors at the Facility. Specifically, acceptable FA is not being provided for approximately 1,017 tons and 397,660 cu. yds. of additional combustible material stored at the Facility [30 TEX. ADMIN. CODE §§ 37.921(a) and 328.5(d)].

5. Failed to process MSW in a manner so as to prevent creation or maintenance of a nuisance. Specifically, MSW was transported by wind from the Facility to surrounding properties [30 TEX. ADMIN. CODE § 330.15(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Executive Summary – Enforcement Matter – Case No. 41827
Kevin Lokey dba Lokey Earth Moving
RN105791172
Docket No. 2011-0946-MSW-E

Technical Requirements:

The Order will require the Respondent to:

a. Immediately:

i. Implement procedures to recycle during each subsequent six-month period at least 50% by weight or volume of each material accumulated at the beginning of the period;

ii. Cease accepting material not authorized by the NOI, including but not limited to, computer and electronic equipment; and

b. Within 30 days:

i. Transport and properly dispose at an authorized facility all waste material not authorized by the current NOI, including but not limited to, computer and electronic equipment;

ii. Submit a revised written closure cost estimate for the Facility, including but not limited to, disposition cost of all processed and unprocessed material;

iii. Demonstrate acceptable financial assurance for combustible material stored at the Facility;

iv. Implement procedures which will prevent transport of MSW by wind to surrounding properties; and

c. Within 90 days, recycle and/or dispose at an authorized facility of the metal, concrete debris, wood, paper, cardboard, plastic, and sheetrock material resulting in storage of recyclable materials to levels that do not exceed maximum quantities specified in the NOI; and

d. Within 105 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

Executive Summary – Enforcement Matter – Case No. 41827
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RN105791172
Docket No. 2011-0946-MSW-E

TCEQ Enforcement Coordinator: Thomas Greimel, Enforcement Division,
Enforcement Team 7, MC 128, (512) 239-5690; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412

TCEQ SEP Coordinator: N/A

Respondent: Kevin Lokey, Owner, Lokey Earth Moving, 7312 93rd Street, Lubbock,
Texas 79424

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	6-Jun-2011	Screening	9-Jun-2011	EPA Due	
	PCW	24-Jun-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Kevin Lokey dba Lokey Earth Moving		
Reg. Ent. Ref. No.	RN105791172		
Facility/Site Region	02-Lubbock	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	41827	No. of Violations	5
Docket No.	2011-0946-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Greimel
		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** **\$10,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **7.0%** Enhancement **Subtotals 2, 3, & 7** **\$735**

Notes: Enhancement for one NOV with a same/similar violation and one NOV with a dissimilar 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** **\$0**

Economic Benefit **50.0%** Enhancement* **Subtotal 6** **\$5,250**

Total EB Amounts **\$113,134**
Approx. Cost of Compliance **\$1,143,195**
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$16,485**

OTHER FACTORS AS JUSTICE MAY REQUIRE **317.6%** Adjustment **\$52,360**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 4.

Final Penalty Amount **\$68,845**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$68,845**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$13,769**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **\$55,076**

Screening Date 9-Jun-2011

Docket No. 2011-0946-MSW-E

PCW

Respondent Kevin Lokey dba Lokey Earth Moving

Policy Revision 2 (September 2002)

Case ID No. 41827

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105791172

Media [Statute] Municipal Solid Waste

Enf. Coordinator Thomas Greimel

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>)	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) 7%

>> **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 a same/similar violation and one NOV with a dissimilar violation.

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

Screening Date 9-Jun-2011
Respondent Kevin Lokey dba Lokey Earth Moving
Case ID No. 41827
Reg. Ent. Reference No. RN105791172
Media [Statute] Municipal Solid Waste
Enf. Coordinator Thomas Greimel
Violation Number 1

Docket No. 2011-0946-MSW-E

PCW

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

Rule Cite(s) 30 Tex. Admin. Code § 328.5(b)

Violation Description

Failed to limit storage of material to be recycled to the maximum amount specified on the Facility's notice of intent ("NOI") and prevent acceptance of material for recycling that is not listed on the NOI. Specifically, approximately 6,017 tons of unprocessed asphalt shingles and approximately 426,592 cubic yards ("cu. yds.") of unprocessed mixed construction and demolition material is being stored at the Facility which exceeds the 5,000 ton and 8,000 cu. yds. NOI storage limits, respectively. Additionally, computer and electronic equipment are being accepted for recycling which are materials not authorized in the current NOI.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	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 \$7,500

\$2,500

Violation Events

Number of Violation Events 2 Number of violation days 50

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

Violation Base Penalty \$5,000

Two monthly events are recommended from the April 20, 2011 investigation date to the June 9, 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 \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$60,696

Violation Final Penalty Total \$32,783

This violation Final Assessed Penalty (adjusted for limits) \$32,783

Economic Benefit Worksheet

Respondent Kevin Lokey dba Lokey Earth Moving
Case ID No. 41827
Reg. Ent. Reference No. RN105791172
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				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$1,091,328	20-Apr-2011	30-May-2012	1.11	\$60,696	n/a	\$60,696
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to recycle and reduce stored quantities of recyclable material to the maximum amounts specified in the Facility's NOI. The Date Required is the investigation date. 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

\$1,091,328

TOTAL

\$60,696

Screening Date 9-Jun-2011

Docket No. 2011-0946-MSW-E

PCW

Respondent Kevin Lokey dba Lokey Earth Moving

Policy Revision 2 (September 2002)

Case ID No. 41827

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105791172

Media [Statute] Municipal Solid Waste

Enf. Coordinator Thomas Greimel

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 328.4(b)(3)

Violation Description

Failed to recycle during each subsequent six-month period at least 50% by weight or volume of each material accumulated at the beginning of the period. Specifically, the Respondent recycled less than 50% of the metal, concrete debris, wood, paper, cardboard, and sheetrock material at the Facility during the period from September 15, 2010 to March 15, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> 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 \$7,500

\$2,500

Violation Events

Number of Violation Events 1

180 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	x
annual	
single event	

Violation Base Penalty \$2,500

One semiannual event is recommended for the six-month period from September 15, 2010 to March 15, 2011.

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 \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$16,392

This violation Final Assessed Penalty (adjusted for limits) \$16,392

Economic Benefit Worksheet

Respondent Kevin Lokey dba Lokey Earth Moving
Case ID No. 41827
Reg. Ent. Reference No. RN105791172
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Economic benefit for this violation calculated in violation no. 1.

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 \$0

TOTAL \$0

Screening Date 9-Jun-2011

Docket No. 2011-0946-MSW-E

PCW

Respondent Kevin Lokey dba Lokey Earth Moving

Policy Revision 2 (September 2002)

Case ID No. 41827

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105791172

Media [Statute] Municipal Solid Waste

Enf. Coordinator Thomas Greimel

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 328.5(c)(2)(A)

Violation Description

Failed to provide a revised, written cost estimate to close a facility which includes disposition of all processed and unprocessed material. Specifically, a revised closure cost estimate was not provided for unprocessed asphalt shingles and unprocessed mixed construction and demolition material at the Facility which exceeds the current NOI storage limits by approximately 1,017 tons and 418,592 cu. yds., respectively.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

50 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x.

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Reduction	
	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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$39

Violation Final Penalty Total \$6,557

This violation Final Assessed Penalty (adjusted for limits) \$6,557

Economic Benefit Worksheet

Respondent Kevin Lokey dba Lokey Earth Moving
Case ID No. 41827
Reg. Ent. Reference No. RN105791172
Media Municipal Solid Waste
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$1,000	20-Apr-2011	30-Jan-2012	0.78	\$39	n/a	\$39
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to to provide a revised, written closure cost estimate for the Facility. Date Required is the investigation date. 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

\$39

Screening Date 9-Jun-2011

Docket No. 2011-0946-MSW-E

PCW

Respondent Kevin Lokey dba Lokey Earth Moving

Policy Revision 2 (September 2002)

Case ID No. 41827

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105791172

Media [Statute] Municipal Solid Waste

Enf. Coordinator Thomas Greimel

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code §§ 37.921(a) and 328.5(d)

Violation Description Failed to provide adequate financial assurance ("FA") for combustible material stored outdoors at the Facility. Specifically, acceptable FA is not being provided for approximately 1,017 tons and 397,660 cu. yds. of additional combustible material stored at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (10%).

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 365

Table for event frequency: daily, weekly, monthly, quarterly, semiannual, annual (marked with x), single event.

Violation Base Penalty \$1,000

One annual event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$52,360

Violation Final Penalty Total \$6,557

This violation Final Assessed Penalty (adjusted for limits) \$6,557

Economic Benefit Worksheet

Respondent Kevin Lokey dba Lokey Earth Moving
Case ID No. 41827
Reg. Ent. Reference No. RN105791172
Media Municipal Solid Waste
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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				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]	\$49,867	20-Apr-2010	20-Apr-2011	1.00	\$2,493	\$49,867	\$52,360
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated additional annual cost to maintain FA coverage for combustible materials at the Facility. The Date Required is one year prior to the investigation date. The Final Date is the date of the investigation.

Approx. Cost of Compliance

\$49,867

TOTAL

\$52,360

Screening Date 9-Jun-2011

Docket No. 2011-0946-MSW-E

PCW

Respondent Kevin Lokey dba Lokey Earth Moving

Policy Revision 2 (September 2002)

Case ID No. 41827

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105791172

Media [Statute] Municipal Solid Waste

Enf. Coordinator Thomas Greimel

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 330.15(a)

Violation Description

Failed to process municipal solid waste ("MSW") in a manner so as to prevent creation or maintenance of a nuisance. Specifically, MSW was transported by wind from the Facility to surrounding properties.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

50 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is 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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$39

Violation Final Penalty Total \$6,557

This violation Final Assessed Penalty (adjusted for limits) \$6,557

Economic Benefit Worksheet

Respondent Kevin Lokey dba Lokey Earth Moving
Case ID No. 41827
Reg. Ent. Reference No. RN105791172
Media Municipal Solid Waste
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

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)	\$1,000	20-Apr-2011	30-Jan-2012	0.78	\$39	n/a	\$39

Notes for DELAYED costs

Estimated cost to implement measures to prevent transport of windblown waste to adjoining properties.
 Date Required is the investigation date. 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 \$39

Compliance History

Customer/Respondent/Owner-Operator: CN603524968 Lokey, Kevin Classification: AVERAGE Rating: 1.50

Regulated Entity: RN105791172 Lokey Earth Moving Classification: AVERAGE Site Rating: 1.50

ID Number(s): MUNICIPAL SOLID WASTE PROCESSING PERMIT 100235

Location: 3804 COUNTY ROAD 1200, LUBBOCK, TX, 79407

TCEQ Region: REGION 02 - LUBBOCK

Date Compliance History Prepared: June 09, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 09, 2006 to June 09, 2011

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

Name: Thomas Greimel Phone: (512) 239-5690

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 07/28/2010 (841684)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	07/20/2010 (841684)	CN603524968
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 328, SubChapter A 328.5(b)	
Description:	Failure to commence operations 90 days after the submittal of the Notice of Intent to operate a recycling facility.	
Date:	10/26/2010 (878327)	CN603524968
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 328, SubChapter A 328.5(b)(4)	
Description:	Failure to accept only those items listed on the NOI.	
- 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
KEVIN LOKEY DBA LOKEY
EARTH MOVING
RN105791172**

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

AGREED ORDER DOCKET NO. 2011-0946-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 Kevin Lokey dba Lokey Earth Moving ("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") recycling facility at 3804 County Road 1200 in Lubbock, Lubbock 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 June 7, 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 Sixty-Eight Thousand Eight Hundred Forty-Five Dollars (\$68,845) is assessed by the Commission in settlement of the violations

alleged in Section II ("Allegations"). The Respondent has paid One Thousand Five Hundred Sixty-One Dollars (\$1,561) of the administrative penalty and Thirteen Thousand Seven Hundred Sixty-Nine Dollars (\$13,769) 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, including the penalty payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Fifty-Three Thousand Five Hundred Fifteen Dollars (\$53,515) of the administrative penalty shall be payable in 35 monthly payments of One Thousand Five Hundred Twenty-Nine Dollars (\$1,529) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 limit storage of material to be recycled to the maximum amount specified on the Facility's notice of intent ("NOI") and prevent acceptance of material for recycling that is not listed on the NOI, in violation of 30 TEX. ADMIN. CODE § 328.5(b), as documented during an investigation conducted on April 20, 2011. Specifically,

approximately 6,017 tons of unprocessed asphalt shingles and approximately 426,592 cubic yards ("cu. yds.") of unprocessed mixed construction and demolition material is being stored at the Facility which exceeds the 5,000 ton and 8,000 cu. yds. NOI storage limits, respectively. Additionally, computer and electronic equipment are being accepted for recycling which are materials not authorized in the current NOI.

2. Failed to recycle during each subsequent six-month period at least 50% by weight or volume of each material accumulated at the beginning of the period, in violation of 30 TEX. ADMIN. CODE § 328.4(b)(3), as documented during an investigation conducted on April 20, 2011. Specifically, the Respondent recycled less than 50% of the metal, concrete debris, wood, paper, cardboard, and sheetrock material at the Facility during the period from September 15, 2010 to March 15, 2011.
3. Failed to provide a revised, written cost estimate to close a facility which includes disposition of all processed and unprocessed material, in violation of 30 TEX. ADMIN. CODE § 328.5(c)(2)(A), as documented during an investigation conducted on April 20, 2011. Specifically, a revised closure cost estimate was not provided for unprocessed asphalt shingles and unprocessed mixed construction and demolition material at the Facility which exceeds the current NOI storage limits by approximately 1,017 tons and 418,592 cu. yds., respectively.
4. Failed to provide adequate financial assurance ("FA") for combustible material stored outdoors at the Facility, in violation of 30 TEX. ADMIN. CODE §§ 37.921(a) and 328.5(d), as documented during an investigation conducted on April 20, 2011. Specifically, acceptable FA is not being provided for approximately 1,017 tons and 397,660 cu. yds. of additional combustible material stored at the Facility.
5. Failed to process MSW in a manner so as to prevent creation or maintenance of a nuisance, in violation of 30 TEX. ADMIN. CODE § 330.15(a), as documented during an investigation conducted on April 20, 2011. Specifically, MSW was transported by wind from the Facility to surrounding properties.

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: Kevin Lokey dba Lokey Earth Moving, Docket No. 2011-0946-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. Immediately upon the effective date of this Agreed Order:

- i. Implement procedures to recycle during each subsequent six-month period at least 50% by weight or volume of each material accumulated at the beginning of the period, in accordance with 30 TEX. ADMIN. CODE § 328.4(b)(3);
- ii. Cease accepting material not authorized by the NOI, including but not limited to, computer and electronic equipment, in accordance with 30 TEX. ADMIN. CODE § 328.5(b); and

b. Within 30 days after the effective date of this Agreed Order:

- i. Transport and properly dispose at an authorized facility all waste material not authorized by the current NOI, including but not limited to, computer and electronic equipment;
- ii. Submit a revised written closure cost estimate for the Facility, including but not limited to, disposition cost of all processed and unprocessed material to:

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

- iii. Demonstrate acceptable financial assurance for combustible material stored at the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 37.921(a) and 328.5(d);
- iv. Implement procedures which will prevent transport of MSW by wind to surrounding properties, in accordance with 30 TEX. ADMIN. CODE § 330.15(a); and

c. Within 90 days after the effective date of this Agreed Order, recycle and/or dispose at an authorized facility of the metal, concrete debris, wood, paper, cardboard, plastic, and sheetrock material resulting in storage of recyclable materials to levels that do not exceed maximum quantities specified in the NOI, in accordance with 30 TEX. ADMIN. CODE § 328.4(b)(3); and

- d. Within 105 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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
Lubbock Regional Office
Texas Commission on Environmental Quality
5012 50th Street, Suite 100
Lubbock, Texas 79414-3421

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

11/20/12

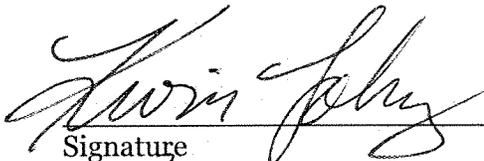
Date

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.

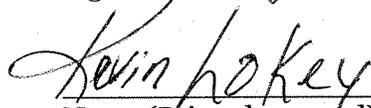
In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

11-10-11

Date



Name (Printed or typed)
Authorized Representative of
Kevin Lokey dba Lokey Earth Moving



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.