

LOUIS O'CONNOR

RN105924336

Docket No. 2011-0947-MLM-E

**Order Type:**

Default Order

**Findings Order Justification:**

N/A

**Media:**

MLM - Municipal Solid Waste and Air

**Small Business:**

N/A

**Location(s) Where Violation(s) Occurred:**12702 32<sup>nd</sup> Street in Santa Fe, Galveston County**Type of Operation:**

unauthorized municipal solid waste ("MSW") disposal site

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** January 20, 2012**Comments Received:** None***Penalty Information*****Total Penalty Assessed:** \$3,192**Total Paid to General Revenue:** \$0**Total Due to General Revenue:** \$3,192**Compliance History Classifications:**

Person/CN – Average  
Site/RN – Average

**Major Source:** No**Statutory Limit Adjustment:** N/A**Applicable Penalty Policy:** September 2002

**LOUIS O’CONNOR**

**RN105924336**

**Docket No. 2011-0947-MLM-E**

***Investigation Information***

**Complaint Date(s):** February 15, 2011  
Complaint Information: Complaint alleged that Respondent was burning trash at the site.  
**Date(s) of Investigation:** February 16, 2011; June 1, 2011  
**Date(s) of NOV(s):** June 29, 2010  
**Date(s) of NOE(s):** June 1, 2011

***Violation Information***

1. Failed to prevent unauthorized outdoor burning (approx. 1 cu/yd of MSW) [30 TEX. ADMIN CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)].
2. Failed to comply with the general prohibition of dumping or disposal of MSW within the State of Texas (approx. 5 cu/yds of MSW) [30 TEX. ADMIN. CODE § 330.15(a)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. Immediately cease disposing of any additional MSW and cease all unauthorized burning at the Site;
2. Within 30 days, ensure that all MSW at the Site, including burned material, is removed and properly disposed of at an authorized facility; and
3. Within 45 days, submit written certification to demonstrate compliance.

***Litigation Information***

**Date Petition(s) Filed:** October 13, 2011 (EDPRP); November 16, 2011 (EDFARP)

**Date(s) Green Card(s) Signed:** October 17, 2011 (EDPRP); November 22, 2011 (EDFARP)

**Date(s) Answer(s) Filed:** N/A

***Contact Information***

**TCEQ Attorneys:** Rudy Calderon, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Garrett Arthur, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Allison Fischer, Water Enforcement Section, (512) 239-2574

**TCEQ Regional Contact:** Jason Harris, Houston Regional Office, (713) 767-3609

**Respondent:** Louis O’Connor, 12702 32<sup>nd</sup> Street, Santa Fe, Texas 77510;  
Louis O’Connor, Inmate, Galveston County Jail, 5700 Avenue H, Galveston, Texas 77551

**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>	6-Jun-2011	<b>Screening</b>	13-Jun-2011	<b>EPA Due</b>	
	<b>PCW</b>	14-Jun-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Louis O'Connor
<b>Reg. Ent. Ref. No.</b>	RN105924336
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	41825	<b>No. of Violations</b>	2
<b>Docket No.</b>	2011-0947-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Municipal Solid Waste	<b>Enf. Coordinator</b>	Allison Fischer
		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$3,000</b>
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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.

<b>Compliance History</b>	<b>5.0%</b> Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$150</b>
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<b>Notes</b>	Enhancement for one NOV with same/similar violations.
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<b>Culpability</b>	<b>No</b>	<b>0.0%</b> Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$45	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$118	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$3,150</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>1.3%</b>	<b>Adjustment</b>	<b>\$42</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Recommended enhancement to capture the avoided cost of proper disposal associated with violation no. 1.
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<b>Final Penalty Amount</b>	<b>\$3,192</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$3,192</b>
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<b>DEFERRAL</b>	<b>0.0%</b> Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	<b>\$3,192</b>
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**Screening Date** 13-Jun-2011  
**Respondent** Louis O'Connor  
**Case ID No.** 41825  
**Reg. Ent. Reference No.** RN105924336  
**Media [Statute]** Air  
**Enf. Coordinator** Allison Fischer

**Docket No.** 2011-0947-MLM-E

**PCW**

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

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 5%

#### >> Repeat Violator (Subtotal 3)

No

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

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

Average Performer

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

#### >> Compliance History Summary

**Compliance History Notes**

Enhancement for one NOV with same/similar violations.

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

**Screening Date** 13-Jun-2011  
**Respondent** Louis O'Connor  
**Case ID No.** 41825  
**Reg. Ent. Reference No.** RN105924336  
**Media [Statute]** Air  
**Enf. Coordinator** Allison Fischer

**Docket No.** 2011-0947-MLM-E

**PCW**

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

**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"/>	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text" value="10%"/>
Potential	<input type="text"/>	<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

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>	

**Violation Base Penalty**

**Good Faith Efforts to Comply**

**0.0%** Reduction  
 Before NOV    NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(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** Louis O'Connor  
**Case ID No.** 41825  
**Req. Ent. Reference No.** RN105924336  
**Media** Air  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

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

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)	\$42	16-Feb-2011	16-Feb-2011	0.00	\$0	\$42	\$42

Notes for AVOIDED costs

Cost to collect and dispose of one cubic yard of waste at a permitted municipal solid waste landfill rather than burning it. The Date Required and the Final Date are the date the outdoor burning event was documented.

Approx. Cost of Compliance \$42

**TOTAL** \$42

Screening Date 13-Jun-2011

Docket No. 2011-0947-MLM-E

PCW

Respondent Louis O'Connor

Policy Revision 2 (September 2002)

Case ID No. 41825

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105924336

Media [Statute] Air

Enf. Coordinator Allison Fischer

Violation Number 2

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

Violation Description Failed to comply with the general prohibition of dumping or disposal of municipal solid waste within the State of Texas. Specifically, approximately five cubic yards of waste (sheetrock, untreated lumber, aluminum, aerosol cans and a garden hose) were disposed of at an unauthorized site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (10%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

Matrix Notes Human health and the environment have been exposed to insignificant amounts of pollutants 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 2 117 Number of violation days

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

Violation Base Penalty \$2,000

Two quarterly events are recommended from the violation date of February 16, 2011 to the screening date of June 13, 2011.

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 \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$2,128

This violation Final Assessed Penalty (adjusted for limits) \$2,128

## Economic Benefit Worksheet

**Respondent** Louis O'Connor  
**Case ID No.** 41825  
**Req. Ent. Reference No.** RN105924336  
**Media** Air  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

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)	\$76	16-Feb-2011	15-Dec-2011	0.83	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to collect and dispose of approximately five cubic yards of waste (waste remaining after being burned). The Date Required is the date the waste was burned 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

\$76

**TOTAL**

\$3

# Compliance History

Customer/Respondent/Owner-Operator: CN603668237 OCONNOR, LOUIS Classification: AVERAGE Rating: 3.00

Regulated Entity: RN105924336 12702 32ND STREET Classification: AVERAGE Site Rating: 3.00  
ID Number(s):  
Location: 12702 32ND STREET, SANTA FE, TX, 77510

TCEQ Region: REGION 12 – HOUSTON

Date Compliance History Prepared: June 13, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 13, 2006 to June 13, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Allison Fischer Phone: (512) 239 – 2574

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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.)  
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 06/29/2010 (803300)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 111, SubChapter B 111.219(5)  
30 TAC Chapter 111, SubChapter B 111.219(7)  
5C THSC Chapter 382 382.085(b)  
Description: Failure to comply with 30 TAC 111.219 (7) and 30 TAC 111.219 (5) by conducting an illegal burn by burning automobile waste, along with other non-brush material, less than 300 ft from nearest sensitive receptor.
- 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

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
LOUIS O'CONNOR;  
RN105924336**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2011-0947-MLM-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Louis O'Connor ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent operates an unauthorized municipal solid waste ("MSW") disposal site at 12702 32nd Street in Santa Fe, Galveston 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 and consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on February 16, 2011, and a record review conducted on June 1, 2011, a Galveston County Health District investigator documented that Respondent:
  - a. Failed to prevent unauthorized outdoor burning. Specifically, Respondent burned approximately one cubic yard of MSW, including sheetrock, untreated lumber, aluminum, aerosol cans and a garden hose at the Site; and
  - b. Failed to comply with the general prohibition of dumping or disposal of MSW within the State of Texas. Specifically, Respondent disposed of approximately five cubic yards of MSW (sheetrock, untreated lumber, aluminum, aerosol cans and a garden hose) at the Site.
3. Respondent received notice of the violations on or about June 6, 2011.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Louis O'Connor" (the "EDPRP") in the TCEQ Chief Clerk's office on October 13, 2011.

5. By letter dated October 13, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on October 17, 2011, as evidenced by the signature on the card.
6. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Louis O'Connor" (the "EDFARP") in the TCEQ Chief Clerk's office on November 16, 2011.
7. By letter dated November 16, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDFARP. According to the return receipt "green card," Respondent received notice of the EDFARP on November 22, 2011, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Respondent received notice of the EDPRP and the EDFARP. Respondent failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE chs. 361 and 382 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to prevent unauthorized outdoor burning, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to comply with the general prohibition of dumping or disposal of MSW within the State of Texas, in violation of 30 TEX. ADMIN. CODE § 330.15(a).
4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Findings of Fact Nos. 6 and 7, the Executive Director timely served Respondent with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 8, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.

7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent 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.
8. An administrative penalty in the amount of three thousand one hundred ninety-two dollars (\$3,192.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### **ORDERING PROVISIONS**

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

1. Respondent is assessed an administrative penalty in the amount of three thousand one hundred ninety-two dollars (\$3,192.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Louis O'Connor; Docket No. 2011-0947-MLM-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

3. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Respondent shall cease disposing of any additional MSW and cease all unauthorized burning at the Site, in accordance with 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b);
  - b. Within 30 days after the effective date of this Order, Respondent shall ensure that all MSW at the Site, including burned material, is removed and properly disposed of at an authorized facility;
  - c. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.d., below, to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b.;

- d. The certification required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, 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."

Respondent shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Jason Harris, Air Section, Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF RUDY CALDERON**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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"My name is Rudy Calderon. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Louis O'Connor" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 13, 2011.

The EDPRP was mailed to Respondent's last known address on October 13, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on October 17, 2011, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Louis O'Connor" (the "EDFARP") was filed in the TCEQ Chief Clerk's office on November 16, 2011.

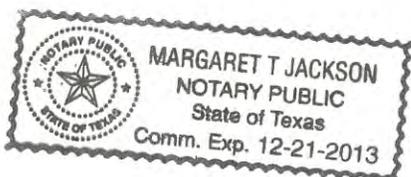
The EDFARP was mailed to Respondent's last known address on November 16, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDFARP on November 22, 2011, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP and EDFARP. Respondent failed to file an answer and failed to request a hearing."

Rudy Calderon, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 9th day of March, A.D. 2012.



Notary Signature