

**Executive Summary – Enforcement Matter – Case No. 41721**

**City of Edinburg**

**RN102456365 and RN102143245**

**Docket No. 2011-0862-MLM-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MLM - MSW, WQ

**Small Business:**

No

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

City Service Center, located at 1201 North Doolittle Road, Hidalgo County

City of Edinburg Landfill, located two miles northeast of the Hidalgo County Courthouse and 0.25 mile north of Farm-to-Market Road 2128 on Doolittle Road, Edinburg, Hidalgo County

**Type of Operation:**

City service center and a public works yard

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

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

**Texas Register Publication Date:** March 2, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$12,000

**Amount Deferred for Expedited Settlement:** \$2,400

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

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

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

Payment Plan: N/A

**SEP Conditional Offset:** \$9,600

Name of SEP: Stabilization of Embankments at World Birding Center Lake

**Compliance History Classifications:**

Person/CN - Average

Site/RN102456365 - Average by Default

Site/RN102143245 - Average by Default

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 41721**  
**City of Edinburg**  
**RN102456365 and RN102143245**  
**Docket No. 2011-0862-MLM-E**

***Investigation Information***

**Complaint Date(s):** January 25, 2011 and April 6, 2011

**Complaint Information:** Alleged that approximately 1,200 gallons of used primer oil was dumped into a pit and covered up as a means of disposal at the City of Edinburg Service Center by the City of Edinburg Streets Department. The second complaint alleged that used tar and other oils had been dumped into an open pit as a means of disposal at the City of Edinburg Public Works Yard.

**Date(s) of Investigation:** February 7, 2011, February 18, 2011, and April 19, 2011

**Date(s) of NOE(s):** April 20, 2011 and June 18, 2011

***Violation Information***

1. Failed to obtain authorization under a Texas Pollutant Discharge Elimination System (“TPDES”) Multi-Sector General Permit (“MSGP”) to discharge storm water associated with roadway materials handling and storage at Facility No. 1 [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].
2. Failed to dispose of municipal solid waste at an authorized facility. Specifically, a petroleum-based road tar was buried in a pit at Facility No. 1 [30 TEX. ADMIN. CODE § 330.15(a)(1)].
3. Failed to prevent the unauthorized discharge of waste. Specifically, during the transfer process from aboveground storage tanks (“ASTs”) to a tank truck, an unknown quantity of a petroleum-based tar substance was discharged directly onto native soil adjacent to the two ASTs at Facility No. 1 [30 TEX. ADMIN. CODE § 330.15(a)(1)].
4. Failed to dispose of municipal solid waste at an authorized facility. Specifically, the Respondent disposed of approximately 1,100 gallons of a tar substance, approximately 97 gallons of thermoplastic paint, approximately 100 cubic yards of street sweepings, and approximately 722 cubic yards of brush at Facility No. 2 [30 TEX. ADMIN. CODE § 330.15(a)(1)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

- a. By March 30, 2011, obtained authorization to discharge storm water under TPDES MSGP No. TXR05AC67;
- b. By May 17, 2011, properly disposed of approximately 2,452 tons of impacted soil from clean up of the pit and impacted soil around the ASTs from Facility No. 1 at an authorized facility; and
- c. By July 21, 2011, properly disposed of approximately 1,084 tons of municipal solid waste from Facility No. 2.

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**City of Edinburg**  
**RN102456365 and RN102143245**  
**Docket No. 2011-0862-MLM-E**

**Technical Requirements:**

1. The Order will require the Respondent to implement and complete a Supplemental Environmental Project (“SEP”). (See SEP Attachment A)
2. The Order will also require the Respondent to:
  - a. Immediately, cease disposing of any additional waste at the Facilities;
  - b. Within 30 days:
    - i. Conduct employee training regarding proper waste disposal at the Facilities;
    - ii. Develop and implement procedures to eliminate discharges during the transfer of tar from storage tanks into tank trucks at Facility No. 1; and
  - c. 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:** Jennifer Graves, Enforcement Division, Enforcement Team 1, MC R-15, (956) 430-6023; Debra Barber, Enforcement Division, MC 219, (512) 239-0412  
**TCEQ SEP Coordinator:** Sharon Blue, SEP Coordinator, Litigation Division, MC 175, (512) 239-2223  
**Respondent:** The Honorable Richard H. Garcia, Mayor, City of Edinburg, P.O. Box 1079, Edinburg, Texas 78540  
**Respondent's Attorney:** N/A



**Attachment A**  
**Docket Number: 2011-0862-MLM-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of Edinburg
<b>Penalty Amount:</b>	Nine Thousand Six Hundred Dollars (\$9,600)
<b>SEP Offset Amount:</b>	Nine Thousand Six Hundred Dollars (\$9,600)
<b>Type of SEP:</b>	Custom
<b>Project Name:</b>	<i>Stabilization of Embankments at World Birding Center Lake</i>
<b>Location of SEP:</b>	Hidalgo County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

Respondent shall install concrete rip-rap material along the eroded embankments of the two large ponds of the wetland area at the World Birding Center located at 714 South Raul Longoria Road, Edinburg, Texas (the “Site”). The rip-rap material will be trucked into the site and placed at various shoreline locations requiring stabilization. Gravel and pea gravel will be added, along with soil needed to cover the rip-rap, as shown in Exhibit B, Wetland Design. The soil will provide a base for the re-growth of riparian vegetation, emergent and submergent vegetation. Respondent shall ensure replanting of the vegetation in the constructed wetland with new plantings concurrent with the placement of soils to discourage erosion and sedimentation. Water levels may be lowered to allow for proper planting. Plantings will also be made in the shallow areas of the wetland following the seasonal departure of migratory waterfowl from the existing wetland area. Respondent will provide the labor at no cost to the SEP.

The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations. Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs.

Respondent’s signature affixed to this Agreed Order certifies that it has no prior commitment to do this project and that it is being done solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

Wetlands provide productive ecosystems that are rich in organic matter and nutrients which support organisms within the wetland and can be effective in improving the water quality in area lakes, rivers, and estuaries. Improving wetland vegetation impacts the productivity of these

systems by supporting waterfowl and other wildlife, as well as capturing sediments, and filtering pollutants, which improves water quality.

This SEP will provide a discernible environmental benefit by providing and dedicating water for wildlife habitat, specifically freshwater ecosystems, while simultaneously improving water quality into the Laguna Madre through natural processes in the wetland system.

C. Minimum Expenditure

Respondent shall spend at least the SEP Offset Amount in accordance with Section 4, Estimated Budget, to complete the project described above and comply with all other provisions of this SEP. Respondent understands that it may cost more than the SEP Offset Amount to complete the Project.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of the SEP. Respondent shall have completed the SEP in its entirety within 365 days after the effective date of this Agreed Order.

**3. Records and Reporting**

A. Progress Report

Within 30 days after the effective date of this Agreed Order, Respondent shall submit a Notice of Commencement to the TCEQ describing actions taken to begin the project. Within 90 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made on the project during the previous 60-day period and setting forth a schedule for achieving completion of the project within the time-frame required in Section 2, *Performance Schedule*, above. Thereafter, Respondent shall submit progress reports to the TCEQ in the following increments and containing detailed information as set forth in the Reporting Schedule table below:

Days from Effective Order Date	Information Required
30	Notice of Commencement describing actions taken to begin project
90	Actions taken during previous 60-day period to implement the project
180	Actions taken during previous 90-day period to implement the project
270	Actions taken during previous 90-day period to implement the project
365	Notice of SEP completion

B. Final Report

Within 60 days after completion of SEP, and not later than 425 days after the effective date of the Agreed Order, Respondent shall submit a Final Report to the TCEQ, which shall include:

1. An itemized list of expenditures and total of costs incurred;
2. Copies of all receipts, checks, or other verifying documentation;
3. List of plant species, and number of each type planted at the Site;
4. Photographs of the project, including **before, during and after the implementation of the project**;
5. A map identifying the location(s) of the work performed. The map must be of sufficient detail to allow TCEQ staff to verify the location(s) of the completed project;
6. A statement of quantifiable environmental benefits; and
7. Any additional information that will demonstrate compliance with this Attachment A.

C. Address

Respondent shall submit all SEP reports and any requested additional information to the following address:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-31087

**4. Estimated Project Budget**

The estimated Project Budget will be used as guidance for all expenditures of the SEP Offset Amount for this Project. If the Project costs for any phase increase by more than ten (10) percent of the estimated cost, Respondent shall notify the TCEQ prior to expenditure. If Respondent does not receive TCEQ approval for the increased cost expenditure, the SEP Offset Amount shall not be used for that increased cost expenditure. Respondent and TCEQ acknowledge that there may be other Project costs that are not in the Attachment A that may be paid for with non-SEP funds.

Quantity	Description	Price	Total
1000 Tons	Rip Rap	\$ 0.50	\$ 500.00
375 Tons	Top Soil	\$ 3.50	\$ 1,312.50
150 Tons	2" Rock	\$ 15.00	\$ 2,250.00
75 Tons	Pea Gravel	\$ 15.00	\$ 1,125.00
	<b>Total Materials Amount</b>		<b>\$ 5,187.50</b>

Quantity	Description	Price	Total
125 Gals.	2 tandem trucks	\$ 3.24	\$ 405.00
162 Gals.	1 backhoe	\$ 3.03	\$ 490.86
162 Gals.	1 loader	\$ 3.03	\$ 490.86
30 Gals.	2-1/2 Ton pickup trucks (Supervisor)	\$ 2.97	\$ 89.10
	<b>Total Fuel Amount</b>		<b>\$ 1,475.82</b>

QTY	DAYS	Description	Price	Total
187	7.8	1 wheel loader (3 cubic yards)	\$ 80.00	\$ 623.33
187	7.8	1 wheel backhoe (2 cubic yards)	\$ 55.00	\$ 428.54
150	6.3	1/2 Ton pickup truck (Supervisor)	\$ 25.00	\$ 156.25
150	6.3	1/2 Ton pickup truck (Supervisor)	\$ 25.00	\$ 156.25
125	5.2	Dump Truck	\$ 55.00	\$ 286.46
125	5.2	Dump Truck	\$ 55.00	\$ 286.46
		Total Hours Amount		\$ 1,937.29

Quantity	Description	Price	Total
1 Lump Sum	Riparian, Emergent and Submergent vegetation	\$ 1,000.00	\$ 1,000.00
GRAND TOTAL			\$ 9,600.61

**5. Additional Information and Access**

Respondent shall provide additional information as required by TCEQ staff and shall allow access to all records related to the receipt and expenditure of the SEP Offset Amount. Respondent shall also allow representatives of the TCEQ access to the Site of any work being financed in whole or in part by the SEP Offset Amount. This provision shall survive the termination of this Agreed Order.

**6. Failure to Fully Perform**

If Respondent does not perform its obligations under this Attachment A in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director (“ED”) may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to “Texas Commission on Environmental Quality” and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-3087

**7. Publicity**

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ.** Such statements include advertising, public relations, and press releases.

**8. Clean Texas Program**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**9. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	Assigned	25-Apr-2011	Screening	12-May-2011	EPA Due	
	PCW	18-May-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	City of Edinburg (Facility No. 1)
Reg. Ent. Ref. No.	RN102456365
Facility/Site Region	15-Harlingen
Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	41721	No. of Violations	3	
Docket No.	2011-0862-MLM-E	Order Type	1660	
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	Yes	
Multi-Media	Water Quality	Enf. Coordinator	Jennifer Graves	
		EC's Team	Enforcement Team 1	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$11,500</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>0.0%</b> Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$0</b>
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Notes: No adjustment for compliance history.

<b>Culpability</b>	<b>No</b>	<b>0.0%</b> Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$500</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	\$817
Approx. Cost of Compliance	\$64,161

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$11,000</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0.0%</b>	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$11,000</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$11,000</b>
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<b>DEFERRAL</b>	<b>20.0%</b> Reduction	<b>Adjustment</b>	<b>-\$2,200</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$8,800</b>
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Screening Date 12-May-2011

Docket No. 2011-0862-MLM-E

PCW

Respondent City of Edinburg (Facility No. 1)

Policy Revision 2 (September 2002)

Case ID No. 41721

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102456365

Media [Statute] Municipal Solid Waste

Enf. Coordinator Jennifer Graves

### 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> )	0	0%
	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)** 0%

>> 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

No adjustment for compliance history.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

Screening Date 12-May-2011

Docket No. 2011-0862-MLM-E

PCW

Respondent City of Edinburg (Facility No. 1)

Policy Revision 2 (September 2002)

Case ID No. 41721

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102456365

Media [Statute] Municipal Solid Waste

Enf. Coordinator Jennifer Graves

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)

Violation Description Failed to obtain authorization under a Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") to discharge storm water associated with roadway materials handling and storage, as documented during an investigation beginning on February 7, 2011.

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 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

49 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,000

Two monthly events are recommended based on the date the investigation began (February 7, 2011) to the date compliance was achieved (March 30, 2011).

Good Faith Efforts to Comply

25.0% Reduction

\$500

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

Notes

The Respondent achieved compliance by March 30, 2011.

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$20

Violation Final Penalty Total \$1,500

This violation Final Assessed Penalty (adjusted for limits) \$1,500

# Economic Benefit Worksheet

**Respondent** City of Edinburg (Facility No. 1)  
**Case ID No.** 41721  
**Reg. Ent. Reference No.** RN102456365  
**Media** Municipal Solid Waste  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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	\$2,000	7-Feb-2011	30-Mar-2011	0.14	\$1	\$19	\$20
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	\$100	7-Feb-2011	30-Mar-2011	0.14	\$1	n/a	\$1
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a storm water permit and to develop and implement a storm water pollution prevention plan. Date required is the date the investigation began. Final date is the date the permit was obtained.

### 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

\$2,100

**TOTAL**

\$20

Screening Date 12-May-2011

Docket No. 2011-0862-MLM-E

PCW

Respondent City of Edinburg (Facility No. 1)

Policy Revision 2 (September 2002)

Case ID No. 41721

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102456365

Media [Statute] Municipal Solid Waste

Enf. Coordinator Jennifer Graves

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 330.15(a)(1)

Violation Description Failed to dispose of municipal solid waste at an authorized facility as documented during an investigation conducted on February 18, 2011. Specifically, a petroleum-based road tar was buried in a pit at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

As a result of the violation, 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.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3

83 Number of violation days

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

Violation Base Penalty \$7,500

Three monthly events are recommended based on the date the violation was documented (February 18, 2011) to the screening date (May 12, 2011).

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 \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$754

Violation Final Penalty Total \$7,500

This violation Final Assessed Penalty (adjusted for limits) \$7,500

# Economic Benefit Worksheet

**Respondent** City of Edinburg (Facility No. 1)  
**Case ID No.** 41721  
**Reg. Ent. Reference No.** RN102456365  
**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	\$250	18-Feb-2011	30-Apr-2012	1.20	\$15	n/a	\$15
Remediation/Disposal	\$61,311	18-Feb-2011	17-May-2011	0.24	\$739	n/a	\$739
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct employee training regarding the proper disposal of waste. Date required is the date the violation was documented. Final date is the estimated date of compliance. Estimated cost to properly dispose of 2,452 tons of impacted soil. Date required is the date the violation was documented. Final date is the 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

\$61,561

**TOTAL**

\$754

Screening Date 12-May-2011

Docket No. 2011-0862-MLM-E

PCW

Respondent City of Edinburg (Facility No. 1)

Policy Revision 2 (September 2002)

Case ID No. 41721

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102456365

Media [Statute] Municipal Solid Waste

Enf. Coordinator Jennifer Graves

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 330.15(a)(1)

Violation Description

Failed to prevent the unauthorized discharge of waste, as documented during an investigation beginning on February 7, 2011. Specifically, during the transfer process from aboveground storage tanks to a tank truck, an unknown quantity of a petroleum-based tar substance was discharged directly onto native soil adjacent to the two aboveground storage tanks.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

94 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$2,000

Two quarterly events are recommended based on the date the investigation began (February 7, 2011) to the screening date (May 12, 2011).

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 \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$43

Violation Final Penalty Total \$2,000

This violation Final Assessed Penalty (adjusted for limits) \$2,000

# Economic Benefit Worksheet

**Respondent** City of Edinburg (Facility No. 1)  
**Case ID No.** 41721  
**Reg. Ent. Reference No.** RN102456365  
**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)	\$500	7-Feb-2011	30-Apr-2012	1.23	\$2	\$41	\$43
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

Estimated cost to develop and implement procedures to minimize discharges at the Facility where petroleum tar is loaded from storage tanks into tank trucks. Date required is the date the investigation began. Final date is the expected date of compliance.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

**TOTAL** \$43



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	Assigned	1-Jul-2011	Screening	15-Jul-2011	EPA Due	
	PCW	15-Jul-2011				

## RESPONDENT/FACILITY INFORMATION

Respondent	City of Edinburg (Facility No. 2)		
Reg. Ent. Ref. No.	RN102143245		
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	41721	No. of Violations	1
Docket No.	2011-0862-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jennifer Graves
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$1,000</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>0.0%</b> Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$0</b>
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Notes: No adjustment for compliance history.

<b>Culpability</b>	No	<b>0.0%</b> Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondent does not meet the culpability criteria.

<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: \$361  
 Approx. Cost of Compliance: \$27,574  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$1,000</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0.0%</b>	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$1,000</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$1,000</b>
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<b>DEFERRAL</b>	<b>20.0%</b> Reduction	<b>Adjustment</b>	<b>-\$200</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$800</b>
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Screening Date 15-Jul-2011

Docket No. 2011-0862-MLM-E

PCW

Respondent City of Edinburg (Facility No. 2)

Policy Revision 2 (September 2002)

Case ID No. 41721

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102143245

Media [Statute] Municipal Solid Waste

Enf. Coordinator Jennifer Graves

### 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> )	0	0%
	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)**

>> Repeat Violator (Subtotal 3)

**Adjustment Percentage (Subtotal 3)**

>> Compliance History Person Classification (Subtotal 7)

**Adjustment Percentage (Subtotal 7)**

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

Screening Date 15-Jul-2011

Docket No. 2011-0862-MLM-E

PCW

Respondent City of Edinburg (Facility No. 2)

Policy Revision 2 (September 2002)

Case ID No. 41721

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102143245

Media [Statute] Municipal Solid Waste

Enf. Coordinator Jennifer Graves

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 330.15(a)(1)

Violation Description Failed to dispose of municipal solid waste at an authorized facility as documented during an investigation conducted on April 19, 2011. Specifically, the Respondent disposed of approximately 1,100 gallons of a tar substance, approximately 97 gallons of thermoplastic paint, approximately 100 cubic yards of street sweepings, and approximately 722 cubic yards of brush at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	10%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes As a result of the violation, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 87

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

Violation Base Penalty \$1,000

One quarterly event is recommended based on the date the violation was documented (April 19, 2011) to the screening date (July 15, 2011).

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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$361

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

## Economic Benefit Worksheet

**Respondent** City of Edinburg (Facility No. 2)  
**Case ID No.** 41721  
**Reg. Ent. Reference No.** RN102143245  
**Media** Municipal Solid Waste  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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	\$250	19-Apr-2011	30-Apr-2012	1.03	\$13	n/a	\$13
Remediation/Disposal	\$27,324	19-Apr-2011	21-Jul-2011	0.25	\$348	n/a	\$348
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct employee training regarding the proper disposal of waste. Date required is the date the violation was documented. Final date is the estimated date of compliance. Estimated cost to properly dispose of approximately 828 cubic yards of municipal solid waste (828 cubic yards x \$8.33 per cubic yard = \$27,324). Date required is the date the violation was documented. Final date is the 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

\$27,574

**TOTAL**

\$361

# Compliance History

Customer/Respondent/Owner-Operator: CN600647978 City of Edinburg Classification: AVERAGE Rating: 10.98  
Regulated Entity: RN102456365 CITY SERVICE CENTER Classification: AVERAGE Site Rating: 3.01  
BY DEFAULT

ID Number(s): PETROLEUM STORAGE TANK 5155  
REGISTRATION  
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER HAT0040  
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER HAU0137

Location: 1201 N DOOLITTLE RD, EDINBURG, HIDALGO CO, TX

TCEQ Region: REGION 15 - HARLINGEN

Date Compliance History Prepared: August 05, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 05, 2006 to August 05, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Jennifer Graves Phone: (956) 430-6023

## 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.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A



# Compliance History

Customer/Respondent/Owner-Operator: CN600647978 City of Edinburg Classification: AVERAGE Rating: 10.98  
Regulated Entity: RN102143245 CITY OF EDINBURG LANDFILL Classification: AVERAGE Site Rating: 3.01  
BY DEFAULT

ID Number(s): MUNICIPAL SOLID WASTE DISPOSAL PERMIT 243

Location: 2 MILES NE OF HIDALGO COUNTY COURTHOUSE .25  
MILE N OF FM 2128 ON DOOLITTLE RD, EDINBURG, HIDALGO CO, TX

TCEQ Region: REGION 15 - HARLINGEN

Date Compliance History Prepared: July 08, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 08, 2006 to July 08, 2011

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

Name: Jennifer Graves Phone: (956) 430-6023

## 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.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - 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  
CITY OF EDINBURG  
RN102456365 AND RN102143245

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2011-0862-MLM-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 the City of Edinburg ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. 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 city service center ("Facility No. 1") located at 1201 North Doolittle Road and a public works yard ("Facility No. 2") located two miles northeast of the Hidalgo County Courthouse and 0.25 mile north of Farm-to-Market Road 2128 on Doolittle Road, in Edinburg, Hidalgo County, Texas (the "Facilities").
2. The Facilities involve or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Facilities adjoin, are contiguous with, surround, or are near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
4. 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.
5. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 25, 2011 and on or about June 23, 2011.

6. 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.
7. An administrative penalty in the amount of Twelve Thousand Dollars (\$12,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Nine Thousand Six Hundred Dollars (\$9,600) of the administrative penalty shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP") and Two Thousand Four Hundred Dollars (\$2,400) 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.
8. 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.
9. 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.
10. The Executive Director recognizes that the Respondent:
  - a. By March 30, 2011, obtained authorization to discharge storm water under Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") No. TXR05AC67;
  - b. By May 17, 2011, properly disposed of approximately 2,452 tons of impacted soil from clean up of the pit and impacted soil around the aboveground storage tanks ("ASTs") from Facility No. 1 at an authorized facility; and
  - c. By July 21, 2011, properly disposed of approximately 1,084 tons of municipal solid waste from Facility No. 2.
11. 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.
12. 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.
13. 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 Facilities, the Respondent is alleged to have:

1. Failed to obtain authorization under a TPDES MSGP to discharge storm water associated with roadway materials handling and storage at Facility No. 1, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation beginning on February 7, 2011.
2. Failed to dispose of municipal solid waste at an authorized facility, in violation of 30 TEX. ADMIN. CODE § 330.15(a)(1), as documented during an investigation conducted on February 18, 2011. Specifically, a petroleum-based road tar was buried in a pit at Facility No. 1.
3. Failed to prevent the unauthorized discharge of waste, in violation of 30 TEX. ADMIN. CODE § 330.15(a)(1), as documented during an investigation beginning on February 7, 2011. Specifically, during the transfer process from aboveground storage tanks to tank truck, an unknown quantity of a petroleum-based tar substance was discharged directly onto native soil adjacent to the two ASTs at Facility No. 1.
4. Failed to dispose of municipal solid waste at an authorized facility, in violation of 30 TEX. ADMIN. CODE § 330.15(a)(1), as documented during an investigation conducted on April 19, 2011. Specifically, the Respondent disposed of approximately 1,100 gallons of a tar substance, approximately 97 gallons of thermoplastic paint, approximately 100 cubic yards of street sweepings, and approximately 722 cubic yards of brush at Facility No. 2.

## 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 7 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 Edinburg, Docket No. 2011-0862-MLM-E" to:

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

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 7 above, Nine Thousand Six Hundred Dollars (\$9,600) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, cease disposing of any additional waste at the Facilities;
  - b. Within 30 days after the effective date of this Agreed Order:
    - i. Conduct employee training regarding proper waste disposal at the Facilities;
    - ii. Develop and implement procedures to eliminate discharges during the transfer of tar from storage tanks into tank trucks at Facility No. 1; and
  - c. 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. 3.a and 3.b. 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  
Harlingen Regional Office  
Texas Commission on Environmental Quality

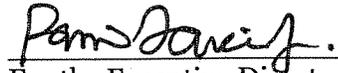
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

4. 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 Facilities operations referenced in this Agreed Order.
5. 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.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by 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.
7. 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.
8. 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.
9. 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

5/22/12

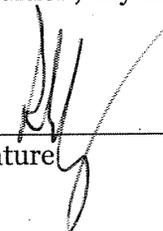
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Date

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

12/29/11

\_\_\_\_\_  
Date

Richard H. Garcia  
Name (Printed or typed)  
Authorized Representative of  
City of Edinburg

Mayor  
\_\_\_\_\_  
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.

**Attachment A**  
**Docket Number: 2011-0862-MLM-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of Edinburg
<b>Penalty Amount:</b>	Nine Thousand Six Hundred Dollars (\$9,600)
<b>SEP Offset Amount:</b>	Nine Thousand Six Hundred Dollars (\$9,600)
<b>Type of SEP:</b>	Custom
<b>Project Name:</b>	<i>Stabilization of Embankments at World Birding Center Lake</i>
<b>Location of SEP:</b>	Hidalgo County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

Respondent shall install concrete rip-rap material along the eroded embankments of the two large ponds of the wetland area at the World Birding Center located at 714 South Raul Longoria Road, Edinburg, Texas (the “Site”). The rip-rap material will be trucked into the site and placed at various shoreline locations requiring stabilization. Gravel and pea gravel will be added, along with soil needed to cover the rip-rap, as shown in Exhibit B, Wetland Design. The soil will provide a base for the re-growth of riparian vegetation, emergent and submergent vegetation. Respondent shall ensure replanting of the vegetation in the constructed wetland with new plantings concurrent with the placement of soils to discourage erosion and sedimentation. Water levels may be lowered to allow for proper planting. Plantings will also be made in the shallow areas of the wetland following the seasonal departure of migratory waterfowl from the existing wetland area. Respondent will provide the labor at no cost to the SEP.

The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations. Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs.

Respondent’s signature affixed to this Agreed Order certifies that it has no prior commitment to do this project and that it is being done solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

Wetlands provide productive ecosystems that are rich in organic matter and nutrients which support organisms within the wetland and can be effective in improving the water quality in area lakes, rivers, and estuaries. Improving wetland vegetation impacts the productivity of these

systems by supporting waterfowl and other wildlife, as well as capturing sediments, and filtering pollutants, which improves water quality.

This SEP will provide a discernible environmental benefit by providing and dedicating water for wildlife habitat, specifically freshwater ecosystems, while simultaneously improving water quality into the Laguna Madre through natural processes in the wetland system.

**C. Minimum Expenditure**

Respondent shall spend at least the SEP Offset Amount in accordance with Section 4, Estimated Budget, to complete the project described above and comply with all other provisions of this SEP. Respondent understands that it may cost more than the SEP Offset Amount to complete the Project.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of the SEP. Respondent shall have completed the SEP in its entirety within 365 days after the effective date of this Agreed Order.

**3. Records and Reporting**

**A. Progress Report**

Within 30 days after the effective date of this Agreed Order, Respondent shall submit a Notice of Commencement to the TCEQ describing actions taken to begin the project. Within 90 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made on the project during the previous 60-day period and setting forth a schedule for achieving completion of the project within the time-frame required in Section 2, *Performance Schedule*, above. Thereafter, Respondent shall submit progress reports to the TCEQ in the following increments and containing detailed information as set forth in the Reporting Schedule table below:

Days from Effective Order Date	Information Required
30	Notice of Commencement describing actions taken to begin project
90	Actions taken during previous 60-day period to implement the project
180	Actions taken during previous 90-day period to implement the project
270	Actions taken during previous 90-day period to implement the project
365	Notice of SEP completion

**B. Final Report**

Within 60 days after completion of SEP, and not later than 425 days after the effective date of the Agreed Order, Respondent shall submit a Final Report to the TCEQ, which shall include:

1. An itemized list of expenditures and total of costs incurred;
2. Copies of all receipts, checks, or other verifying documentation;
3. List of plant species, and number of each type planted at the Site;
4. Photographs of the project, including **before, during and after the implementation of the project**;
5. A map identifying the location(s) of the work performed. The map must be of sufficient detail to allow TCEQ staff to verify the location(s) of the completed project;
6. A statement of quantifiable environmental benefits; and
7. Any additional information that will demonstrate compliance with this Attachment A.

C. Address

Respondent shall submit all SEP reports and any requested additional information to the following address:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-31087

**4. Estimated Project Budget**

The estimated Project Budget will be used as guidance for all expenditures of the SEP Offset Amount for this Project. If the Project costs for any phase increase by more than ten (10) percent of the estimated cost, Respondent shall notify the TCEQ prior to expenditure. If Respondent does not receive TCEQ approval for the increased cost expenditure, the SEP Offset Amount shall not be used for that increased cost expenditure. Respondent and TCEQ acknowledge that there may be other Project costs that are not in the Attachment A that may be paid for with non-SEP funds.

Quantity	Description	Price	Total
1000 Tons	Rip Rap	\$ 0.50	\$ 500.00
375 Tons	Top Soil	\$ 3.50	\$ 1,312.50
150 Tons	2" Rock	\$ 15.00	\$ 2,250.00
75 Tons	Pea Gravel	\$ 15.00	\$ 1,125.00
	<b>Total Materials Amount</b>		<b>\$ 5,187.50</b>

Quantity	Description	Price	Total
125 Gals.	2 tandem trucks	\$ 3.24	\$ 405.00
162 Gals.	1 backhoe	\$ 3.03	\$ 490.86
162 Gals.	1 loader	\$ 3.03	\$ 490.86
30 Gals.	2-1/2 Ton pickup trucks (Supervisor)	\$ 2.97	\$ 89.10
	<b>Total Fuel Amount</b>		<b>\$ 1,475.82</b>

QTY	DAYS	Description	Price	Total
187	7.8	1 wheel loader (3 cubic yards)	\$ 80.00	\$ 623.33
187	7.8	1 wheel backhoe (2 cubic yards)	\$ 55.00	\$ 428.54
150	6.3	1/2 Ton pickup truck (Supervisor)	\$ 25.00	\$ 156.25
150	6.3	1/2 Ton pickup truck (Supervisor)	\$ 25.00	\$ 156.25
125	5.2	Dump Truck	\$ 55.00	\$ 286.46
125	5.2	Dump Truck	\$ 55.00	\$ 286.46
		Total Hours Amount		\$ 1,937.29

Quantity	Description	Price	Total
1 Lump Sum	Riparian, Emergent and Submergent vegetation	\$ 1,000.00	\$ 1,000.00
<b>GRAND TOTAL</b>			<b>\$ 9,600.61</b>

### 5. Additional Information and Access

Respondent shall provide additional information as required by TCEQ staff and shall allow access to all records related to the receipt and expenditure of the SEP Offset Amount. Respondent shall also allow representatives of the TCEQ access to the Site of any work being financed in whole or in part by the SEP Offset Amount. This provision shall survive the termination of this Agreed Order.

### 6. Failure to Fully Perform

If Respondent does not perform its obligations under this Attachment A in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-3087

### 7. Publicity

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

**8. Clean Texas Program**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**9. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.