

Donald R. Davis and Daniel L. Davis

RN104256136

Docket No. 2012-0395-MSW-E

Order Type:

Findings Agreed Order

Findings Order Justification:

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

Media:

MSW

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

5120 East University Drive, Denton, Denton 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:

November 23, 2012

Comments Received:

None

Penalty Information

Total Penalty Assessed:	\$7,850
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Total Paid to General Revenue:	\$220
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Total Due to General Revenue:	\$7,630
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Payment Plan:	35 payments of \$218 each
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Compliance History Classifications:

Person/CN – Average (Both Respondents)	
Site/RN – Average	

Major Source:	No
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Statutory Limit Adjustment:	None
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Applicable Penalty Policy:	September 2002
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Donald R. Davis and Daniel L. Davis

RN104256136

Docket No. 2012-0395-MSW-E

Investigation Information

Complaint Date(s): May 24, 2011; May 31, 2011; June 9, 2011
Complaint Information: Alleged that the site was collecting shingles, paper, metal, and pallets without proper authorization.

Date(s) of Investigation: June 16, 2011; August 4, 2011; January 23, 2012

Date(s) of NOV(s): August 10, 2011

Date(s) of NOE(s): February 2, 2012

Violation Information

Failed to prevent the unauthorized disposal of MSW (approx. 44,930 cubic yards of asphalt shingles, wood pallets, scrap metal and mixed waste) [30 TEX. ADMIN. CODE ch. § 330.15(c)].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

None

Technical Requirements:

1. Immediately cease disposing of any additional MSW at the Site.
2. Within 180 days, remove all MSW from the Site and dispose of it at an authorized facility.
3. Within 195 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1 and 2.

Litigation Information

Date Petition(s) Filed: June 29, 2012; August 21, 2012 (re-filed for service)

Date Answer(s) Filed: July 5, 2012

Settlement Date: October 26, 2012

Contact Information

TCEQ Attorneys: Jim Sallans, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
James Murphy, Public Interest Counsel, (512) 239-6363

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Keith Frank, Enforcement Division, (512) 239-1203

TCEQ Regional Contact: Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5800

Respondent: Donald R. Davis, P.O. Box 74, Krum, Texas 76249
Daniel L. Davis, 6469 Michael Road, Denton, Texas 76266-2235

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	6-Feb-2012	Screening	15-Feb-2012	EPA Due	
	PCW	21-Feb-2012				

RESPONDENT/FACILITY INFORMATION	
Respondent	Donald R. Davis and Daniel L. Davis
Reg. Ent. Ref. No.	RN104256136
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	43578	No. of Violations	1
Docket No.	2012-0395-MSW-E	Order Type	Findings
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Keith Frank
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	7.0% Enhancement	Subtotals 2, 3, & 7	\$350
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Notes	Enhancement for one NOV with same/similar violations and one NOV with dissimilar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondents do not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	50.0% Enhancement*	Subtotal 6	\$2,500
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Total EB Amounts	\$31,319	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$452,724	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,850
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$7,850
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,850
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY	\$7,850
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Screening Date 15-Feb-2012

Docket No. 2012-0395-MSW-E

PCW

Respondent Donald R. Davis and Daniel L. Davis

Policy Revision 2 (September 2002)

Case ID No. 43578

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104256136

Media [Statute] Municipal Solid Waste

Enf. Coordinator Keith Frank

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations and one NOV with dissimilar violations.

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

Screening Date 15-Feb-2012

Docket No. 2012-0395-MSW-E

PCW

Respondent Donald R. Davis and Daniel L. Davis

Policy Revision 2 (September 2002)

Case ID No. 43578

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104256136

Media [Statute] Municipal Solid Waste

Enf. Coordinator Keith Frank

Violation Number 1

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

Violation Description Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 44,930 cubic yards of MSW which included asphalt shingles, wooden pallets, scrap metal and mixed waste were disposed of at the Site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (50%).

>> Programmatic Matrix

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

Matrix Notes Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1 Number of violation days 23

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

Violation Base Penalty \$5,000

One monthly event is recommended based on documentation of the violation during the January 23, 2012 record review to the February 15, 2012 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$31,319 Violation Final Penalty Total \$7,850

This violation Final Assessed Penalty (adjusted for limits) \$7,850

Economic Benefit Worksheet

Respondent Donald R. Davis and Daniel L. Davis
Case ID No. 43578
Reg. Ent. Reference No. RN104256136
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$452,724	16-Jun-2011	2-Nov-2012	1.38	\$31,319	n/a	\$31,319
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the MSW and dispose of it at an authorized facility. Date Required is the initial investigation date. 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

\$452,724

TOTAL

\$31,319

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603433244 Davis, Donald R.	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN104256136 A0417A M Forrest Tract 4	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER	455040150
Location:	5120 E UNIVERSITY DR, DENTON, TX		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	February 17, 2012		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 17, 2007 to February 17, 2012		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Keith Frank</u>	Phone:	<u>(512) 239-1203</u>

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. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	07/21/2009	(721892)
2	01/05/2010	(763035)
3	06/30/2010	(829253)
4	09/08/2011	(949512)
5	01/30/2012	(981881)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 01/05/2010	(763035)	
Self Report?	NO	Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)	
Description:	It is requested that MW-1, MW-2, and MW-3 be resampled and analyzed. It is further recommended that the monitoring wells be redeveloped and properly purged prior to sampling. Regarding the drums of water and soil stored adjacent to the monitoring wells, it is requested that the contents of containers in poor condition be properly contained to prevent the possibility of any leakage or spillage. Also, it is requested that the contents be appropriately characterized and properly disposed.	
Date: 08/10/2011	(937764)	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 330, SubChapter A 330.15(c)	
Description:	Failure to prevent the disposal of municipal solid waste at an unauthorized facility.	
 - 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 Report

Customer/Respondent/Owner-Operator:	CN603433269 Davis, Daniel L.	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN104256136 A0417A M Forrest Tract 4	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER	455040150
Location:	5120 E UNIVERSITY DR, DENTON, TX		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	February 17, 2012		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 17, 2007 to February 17, 2012		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Keith Frank</u>	Phone:	<u>(512) 239-1203</u>

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. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	07/21/2009	(721892)
2	01/05/2010	(763035)
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Date: 01/05/2010	(763035)	
Self Report?	NO	Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)	
Description:	It is requested that MW-1, MW-2, and MW-3 be resampled and analyzed. It is further recommended that the monitoring wells be redeveloped and properly purged prior to sampling. Regarding the drums of water and soil stored adjacent to the monitoring wells, it is requested that the contents of containers in poor condition be properly contained to prevent the possibility of any leakage or spillage. Also, it is requested that the contents be appropriately characterized and properly disposed.	
Date: 08/10/2011	(937764)	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 330, SubChapter A 330.15(c)	
Description:	Failure to prevent the disposal of municipal solid waste at an unauthorized facility.	
 - 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
DONALD R. DAVIS AND
DANIEL L. DAVIS;
RN104256136**

**§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2012-0395-MSW-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Donald R. Davis and Daniel L. Davis ("Respondents") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondents presented this Agreed Order to the Commission.

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

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Respondents.

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

FINDINGS OF FACT

1. Respondents own property with an unauthorized municipal solid waste disposal site located at 5120 East University Drive in Denton, Denton County, Texas (the "Site"). The Site involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During investigations conducted on June 16, 2011, and August 4, 2011, and a record review conducted on January 23, 2012, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondents failed to prevent the unauthorized disposal of MSW. Specifically, the Site had approximately 44,930 cubic yards of MSW that included asphalt shingles, wood pallets, scrap metal and mixed waste.
3. Respondents received notice of the violation on or about February 7, 2012.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No 2, Respondents failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE ch. § 330.15(c).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of seven thousand eight hundred fifty dollars (\$7,850.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondents paid two hundred twenty dollars (\$220.00) of the administrative penalty. The remaining amount of seven thousand six hundred thirty dollars (\$7,630.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of two hundred eighteen dollars (\$218.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondents fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondents' failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondents to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

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

1. Respondents are assessed an administrative penalty as set forth in Conclusion of Law No. 4, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Donald R. Davis and Daniel L. Davis, Docket No. 2012-0395-MSW-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
2. Respondents shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Respondents shall cease disposing of any additional MSW at the Site;

- b. Within 180 days after the effective date of this Agreed Order, Respondents shall remove all MSW from the Site and dispose of it at an authorized facility; and
- c. Within 195 days after the effective date of this Agreed Order, Respondents shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 2.a. and 2.b. The certification 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."

Respondents 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:

Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

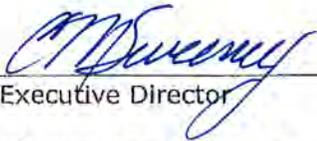
- 3. All relief not expressly granted in this Agreed Order is denied.
- 4. The provisions of this Agreed Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in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

7. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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.
11. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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

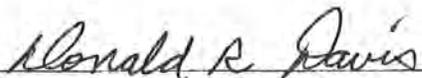
12/17/12
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Donald R. Davis and Daniel L. Davis, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this Agreed Order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General=s office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General=s Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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


Signature -- Donald R. Davis

10/26/12
Date


Signature -- Daniel L. Davis

10/26/12
Date