

Executive Summary – Enforcement Matter – Case No. 44818
Gulf West Landfill TX, LP
RN102151099
Docket No. 2012-1713-IHW-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

IHW

Small Business:

No

Location(s) Where Violation(s) Occurred:

Gulf West Landfill Texas, 2601 Jenkins Road, Anahuac, Chambers County

Type of Operation:

Landfill

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: February 8, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$9,250

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$4,625

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$4,625

Name of SEP: Galveston Bay Foundation - "Marsh Mania"

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

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Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: August 11, 2011

Date(s) of NOE(s): August 8, 2012

Violation Information

1. Failed to prevent the disposal of industrial hazardous waste ("IHW") at an unauthorized facility [30 TEX. ADMIN. CODE § 335.2(a)].
2. Failed to comply with all permit conditions [30 TEX. ADMIN. CODE § 305.125(1) and ISW Permit No. 39039, Waste Analysis Plan, Section Nos. III.A. and III.B].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent completed removal of the IHW from the Facility and disposed of it at an authorized facility and received waste removal documentation and confirmation sampling final approval from the TCEQ by April 27, 2012.

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. Within 90 days, submit an administratively complete permit modification application for the Facility, to include:
 - i. Consolidation of all previously approved revisions to the Facility's Waste Analysis Plan into a stand-alone document;
 - ii. Revisions to the Facility's current Waste Analysis Plan including, but not limited to, specific waste acceptance procedures designed to avoid the receipt, processing, or disposal of unauthorized wastes, including hazardous wastes; and
 - iii. Revisions to the Facility's current Personnel Training Program including, but not limited to, training of Facility employees for waste acceptance procedures that are specifically designed to avoid the receipt, processing, or disposal of unauthorized wastes, including hazardous wastes.
 - b. Obtain an updated Waste Analysis Plan by responding completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit

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modification application within 30 days after the date of such requests or by any other deadline specified in writing;

c. Within 30 days after the TCEQ approval of the permit modification application required by Ordering Provisions a. and b., conduct training for employees on waste acceptance procedures; and

d. Within 15 days after conducting the training required by Ordering Provision c., submit written certification demonstrating compliance with Ordering Provisions a. through c.

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: Keith Frank, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-1203; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565
Respondent: Greg Rutherford, Area President, Gulf West Landfill TX, LP, 18500 North Allied Way, Phoenix, Arizona 85054
Respondent's Attorney: Mary Reagan, McGinnis, Lochridge & Kilgore, L.L.P., 600 Congress Avenue, Suite 2100, Austin, Texas 78701

Attachment A
Docket Number: 2012-1713-IHW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Gulf West Landfill TX, LP
Payable Penalty Amount:	Nine Thousand Two Hundred Fifty Dollars (\$9,250)
SEP Amount:	Four Thousand Six Hundred Twenty-Five Dollars (\$4,625)
Type of SEP:	Pre-approved
Third-Party Recipient:	Galveston Bay Foundation - “Marsh Mania”
Location of SEP:	Harris and Chambers Counties

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

1. Project Description

a. Project

Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Galveston Bay Foundation to be used for the Galveston Bay Foundation “Marsh Mania” as set forth in the agreement between the Third-Party Recipient and the TCEQ. SEP monies will be used to restore shoreline elevations, growing plants for shoreline restoration, and planting new habitat. Historic subsidence and erosion have resulted in shoreline elevations which are too low to support vegetation. This project will seek to raise elevations by scraping and terracing. Scraping involves the use of earthmoving equipment to grade an eroded, bluff-like shoreline so that it slopes gradually towards the water resulting in the ability of plant growth. Terracing uses earthmoving equipment to create small levees by burrowing and stacking sediment in shallow water. The high elevation can then be planted with emergent vegetation. SEP monies will be used to pay for the direct costs of the implementation of the project, including material, equipment, and labor costs.

Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

b. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing food and shelter for a variety of native fish, shellfish, birds, and mammals. The marshes will also result in the reduction of pollution by filtering particulates and excess nutrients from runoff. In addition, the new habitat will protect shorelines from erosion and will help reduce the effects of flooding.

c. Minimum Expenditure

Respondent shall contribute at least the SEP amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent must contribute the SEP amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Mr. Bob Stokes, President
Galveston Bay Foundation
17330 Highway 3
Webster, Texas 77598

3. Records and Reporting

Concurrent with the payment of the SEP amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

Gulf West Landfill TX, LP
Agreed Order - Attachment A

The check for any amount due shall be made out to Texas Commission on Environmental Quality and mailed to:

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

Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

5. 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.

6. 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.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an 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

DATES Assigned
 PCW Screening EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent
 Reg. Ent. Ref. No.
 Facility/Site Region Major/Minor Source

CASE INFORMATION

Enf./Case ID No. No. of Violations
 Docket No. Order Type
 Media Program(s) Government/Non-Profit
 Multi-Media Enf. Coordinator
 EC's Team
 Admin. Penalty \$ Limit Minimum Maximum

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts *Capped at the Total EB \$ Amount
 Approx. Cost of Compliance

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 22-Aug-2012

Docket No. 2012-1713-IHW-E

PCW

Respondent Gulf West Landfill TX, LP

Policy Revision 2 (September 2002)

Case ID No. 44818

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102151099

Media [Statute] Industrial and Hazardous 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>)	3	15%
	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

Enhancement for three NOVs with same/similar violations and repeat violator status.

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

Screening Date 22-Aug-2012
 Respondent Gulf West Landfill TX, LP
 Case ID No. 44818

Docket No. 2012-1713-IHW-E

PCW

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102151099
 Media [Statute] Industrial and Hazardous Waste
 Enf. Coordinator Keith Frank

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="50%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Good Faith Efforts to Comply

	<input type="text" value="25.0%"/>	Reduction	<input type="text" value="\$1,250"/>
		Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text" value="x"/>	<input type="text"/>	
N/A	<input type="text"/>	(mark with x)	

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Estimated EB Amount

Statutory Limit Test

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Gulf West Landfill TX, LP
Case ID No. 44818
Reg. Ent. Reference No. RN102151099
Media Industrial and Hazardous 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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	11-Aug-2011	27-Apr-2012	0.71	\$18	n/a	\$18

Notes for DELAYED costs

Estimated cost to develop and implement procedures designed to prevent the disposal of IHW at unauthorized facilities. Date Required is the investigation date. 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

\$500

TOTAL

\$18

Screening Date 22-Aug-2012
 Respondent Gulf West Landfill TX, LP
 Case ID No. 44818

Docket No. 2012-1713-IHW-E

PCW

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

Reg. Ent. Reference No. RN102151099
 Media [Statute] Industrial and Hazardous Waste
 Enf. Coordinator Keith Frank

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and Industrial Solid Waste Permit No. 39039, Waste Analysis Plan, Section Nos. III.A. and III.B.

Violation Description

Failed to comply with all permit conditions. Specifically, the Respondent accepted a shipment of waste and failed to verify the weight of the container (VB25625) and failed to have site technical personnel representatively sample the contents of the container.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="25%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

100% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Gulf West Landfill TX, LP
Case ID No. 44818
Reg. Ent. Reference No. RN102151099
Media Industrial and Hazardous 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
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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	\$500	17-May-2011	10-May-2013	1.98	\$50	n/a	\$50
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 conduct training for employees on waste acceptance procedures. Date Required is the disposal date of the IHW. 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

\$500

TOTAL

\$50

Compliance History Report

Customer/Respondent/Owner-Operator: CN601690480 Gulf West Landfill TX, LP Classification: AVERAGE Rating: 3.46

Regulated Entity: RN102151099 Gulf West Landfill Texas Classification: AVERAGE Site Rating: 10.35

ID Number(s): INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXD980864078
INDUSTRIAL AND HAZARDOUS WASTE SOLID WASTE REGISTRATION # 39039
(SWR)
INDUSTRIAL AND HAZARDOUS WASTE PERMIT 39039
MUNICIPAL SOLID WASTE DISPOSAL PERMIT 39039
POLLUTION PREVENTION PLANNING ID NUMBER P07341

Location: 2601 JENKINS RD, ANAHUAC, TX,

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: August 21, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 21, 2007 to August 21, 2012

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Keith Frank Phone: (512) 239-1203

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: YES

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 | 08/24/2007 | (567448) |
| 2 | 03/16/2009 | (688942) |
| 3 | 05/27/2009 | (745294) |
| 4 | 08/21/2009 | (746924) |
| 5 | 03/10/2010 | (747295) |
| 6 | 08/08/2012 | (944967) |
| 7 | 10/18/2011 | (957688) |
| 8 | 12/01/2011 | (968645) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 03/16/2009 (688942)
- Self Report? NO Classification: Major
- Citation: 30 TAC Chapter 335, SubChapter A 335.2(b)
30 TAC Chapter 335, SubChapter B 335.43(a)

Permit Provision II.A.2.g. PERMIT

Description: Unauthorized acceptance, treatment, and disposal of approximately 63 tons of hazardous waste in a Class 1 landfill from December 8 to 13, 2004.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 335, SubChapter O 335.431(c)
40 CFR Chapter 268, SubChapter I, PT 268, SubPT C 268.34(a)
40 CFR Chapter 268, SubChapter I, PT 268, SubPT C 268.34(f)
40 CFR Chapter 268, SubChapter I, PT 268, SubPT D 268.40

Description: Failure to treat approximately 63 tons of hazardous waste to treatment standards before placing in a land based unit.

Self Report? NO Classification: Minor

Citation: 40 CFR Chapter 61, SubChapter C, PT 61, SubPT M 61.154(e)(1)(ii)

Description: Failure to properly complete two manifests for asbestos waste with all information required for regulated asbestos shipments.

Self Report? NO Classification: Moderate

Citation: 40 CFR Chapter 61, SubChapter C, PT 61, SubPT M 61.154(f)

Description: Failure to keeping complete documentation for recording the location of asbestos waste.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.2(a)
Permit Provision VII.C PERMIT

Description: Failure to follow the site's Waste Analysis Plan for laboratory log documentation and annual generator certification.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.2(a)
Permit Provision III.D.6 PERMIT
Permit Provision III.D.9 PERMIT

Description: Failure to conduct leachate level monitoring and failed to take all steps necessary to remove leachate levels above one foot.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.2(a)
Permit Provision III.A.13.1 PERMIT
Permit Provision IIIA.13.4 PERMIT

Description: Failure to conduct volatile organic compound (VOC) breakthrough monitoring on a weekly basis for the carbon canisters for at least the past three years.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.2(a)
Permit Provision III.B.7 PERMIT
Permit Provision III.B.7.j PERMIT

Description: Failure to submit the Annual Facility Report on-time and with all required information.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.15(2)
Permit Provision IX.C PERMIT

Description: Failure to submit complete and correct Monthly Waste Receipt Summaries since the September 2006 report.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)
Permit Provision VI PERMIT

Description: Failure to update the site's Notice of Registration for waste stream and waste management unit information.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter A 335.10(c)
40 CFR Chapter 262, SubChapter I, PT 262, SubPT B 262.20(a)(1)

Description: Failure to correctly complete the Uniform Hazardous Waste Manifest for EPA Hazardous Waste Codes.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter Q 335.475

Description: Failure to have a Pollution Prevention Plan.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.2(a)
Permit Provision VII.D PERMIT

Description: Failure to follow required procedures in the site's Inspection Plan.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(3)
 40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(3)
 Permit Provision II.E. PERMIT
 Permit Provision III.A.11 PERMIT

Description: Failure to properly label hazardous waste tanks and permitted units.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(B)
 30 TAC Chapter 335, SubChapter E 335.112(a)
 40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(1)(ii)
 40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.193(e)(1)(iii)

Description: Failure to maintain secondary containment free of cracks and gaps.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(B)
 30 TAC Chapter 335, SubChapter E 335.112(a)
 40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(1)(ii)
 40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.192

Description: Failure to have a professional engineer certification for two hazardous waste tanks.

Date: 08/20/2009 (746924) CN601690480

Self Report? NO Classification: Major

Citation: 2.A.2.g PERMIT
 30 TAC Chapter 335, SubChapter A 335.2(a)
 30 TAC Chapter 335, SubChapter B 335.43(a)

Description: Unauthorized waste disposal of five 55-gallon drums of K049 and characteristically hazardous (D018) hazardous wastes.

Date: 03/10/2010 (747295) CN601690480

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.7(a)
 30 TAC Chapter 335, SubChapter A 335.2(a)

Description: Unauthorized disposal of hazardous waste in Class-1 landfill.

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
GULF WEST LANDFILL TX, LP
RN102151099

§
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§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2012-1713-IHW-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Gulf West Landfill TX, LP ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Mary Reagan of the law firm of McGinnis, Lochridge & Kilgore, L.L.P., presented this agreement to the Commission.

The Respondent understands that it has 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, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement 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 the Respondent.

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a landfill at 2601 Jenkins Road near Anahuac, Chambers County, Texas (the "Facility").

2. The Facility involves or involved the management of industrial solid waste ("ISW") as defined in TEX. HEALTH & SAFETY CODE ch. 361 at the time of the violations.
3. During an investigation conducted between August 11 and September 14, 2011, TCEQ staff documented the Respondent disposed of industrial hazardous waste ("IHW") at an unauthorized facility. Specifically, the Respondent received waste on May 17, 2011 that was manifested by the generator as Class I non-hazardous waste, but subsequently discovered by the generator to be properly classified as heat exchanger bundle cleaning sludge (K050 hazardous waste code listing).
4. During an investigation conducted between August 11 and September 14, 2011, TCEQ staff documented the Respondent accepted a shipment of waste and failed to verify the weight of the container (VB25625) and failed to have site technical personnel representatively sample the contents of the container.
5. The Respondent received notice of the violations on August 13, 2012.
6. The Executive Director recognizes that the Respondent completed removal of the IHW from the Facility, and disposed of it at an authorized facility and received waste removal documentation and confirmation sampling final approval from the TCEQ by April 27, 2012.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent the disposal of IHW at an unauthorized facility, in violation of 30 TEX. ADMIN. CODE § 335.2(a).
3. As evidenced by Findings of Fact No. 4, the Respondent failed to comply with all permit conditions, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and ISW Permit No. 39039, Waste Analysis Plan, Section Nos. III.A. and III.B.
4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of Nine Thousand Two Hundred Fifty Dollars (\$9,250) 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. The Respondent has paid the Four Thousand Six Hundred Twenty-Five Dollar (\$4,625) administrative penalty. Four Thousand Six Hundred Twenty-Five Dollars (\$4,625) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Nine Thousand Two Hundred Fifty Dollars (\$9,250) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Gulf West Landfill TX, LP, Docket No. 2012-1713-IHW-E" to:

Financial Administration Division, Revenue Operations 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 II, Paragraph 5 above, Four Thousand Six Hundred Twenty-Five Dollars (\$4,625) 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. The Respondent shall undertake the following technical requirements:
 - a. Within 90 days after the effective date of this Agreed Order, submit an administratively complete permit modification application for the Facility, in accordance with 30 TEX. ADMIN. CODE § 305.69, to include:
 - i. Consolidation of all previously approved revisions to the Facility's Waste Analysis Plan into a stand-alone document;
 - ii. Revisions to the Facility's current Waste Analysis Plan including, but not limited to, specific waste acceptance procedures designed to avoid the receipt, processing, or disposal of unauthorized wastes, including hazardous wastes; and
 - iii. Revisions to the Facility's current Personnel Training Program including, but not limited to, training of Facility employees for waste acceptance procedures that are specifically designed to avoid the receipt, processing, or disposal of unauthorized wastes, including hazardous wastes.

The original and two copies of the permit modification application shall be submitted to:

Industrial & Hazardous Waste Permits Section, MC 130
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Obtain an updated Waste Analysis Plan by responding completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit modification application within 30 days after the date of such requests or by any other deadline specified in writing;
- c. Within 30 days after the TCEQ approval of the permit modification application required by Ordering Provision Nos. 3.a. and 3.b., conduct training for employees on waste acceptance procedures, in accordance with 30 TEX. ADMIN. CODE § 305.125 and ISW Permit No. 39039; and
- d. Within 15 days after conducting the training required by Ordering Provision No. 3.c., 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. through 3.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that 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
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

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 Facility 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. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
8. 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.
9. 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.
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. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pam Jancig
For the Executive Director

2/22/13
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Gulf West Landfill TX, LP. I am authorized to agree to the attached Agreed Order on behalf of Gulf West Landfill TX, LP, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Gulf West Landfill TX, LP waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

Greg Rutherford
Signature

12/17/12
Date

Greg Rutherford
Name (Printed or typed)
Authorized Representative of
Gulf West Landfill TX, LP

Area President
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2012-1713-IHW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Gulf West Landfill TX, LP
Payable Penalty Amount:	Nine Thousand Two Hundred Fifty Dollars (\$9,250)
SEP Amount:	Four Thousand Six Hundred Twenty-Five Dollars (\$4,625)
Type of SEP:	Pre-approved
Third-Party Recipient:	Galveston Bay Foundation - “Marsh Mania”
Location of SEP:	Harris and Chambers Counties

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

1. Project Description

a. Project

Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Galveston Bay Foundation to be used for the Galveston Bay Foundation “Marsh Mania” as set forth in the agreement between the Third-Party Recipient and the TCEQ. SEP monies will be used to restore shoreline elevations, growing plants for shoreline restoration, and planting new habitat. Historic subsidence and erosion have resulted in shoreline elevations which are too low to support vegetation. This project will seek to raise elevations by scraping and terracing. Scraping involves the use of earthmoving equipment to grade an eroded, bluff-like shoreline so that it slopes gradually towards the water resulting in the ability of plant growth. Terracing uses earthmoving equipment to create small levees by burrowing and stacking sediment in shallow water. The high elevation can then be planted with emergent vegetation. SEP monies will be used to pay for the direct costs of the implementation of the project, including material, equipment, and labor costs.

Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

b. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing food and shelter for a variety of native fish, shellfish, birds, and mammals. The marshes will also result in the reduction of pollution by filtering particulates and excess nutrients from runoff. In addition, the new habitat will protect shorelines from erosion and will help reduce the effects of flooding.

c. Minimum Expenditure

Respondent shall contribute at least the SEP amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent must contribute the SEP amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Mr. Bob Stokes, President
Galveston Bay Foundation
17330 Highway 3
Webster, Texas 77598

3. Records and Reporting

Concurrent with the payment of the SEP amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

Gulf West Landfill TX, LP
Agreed Order - Attachment A

The check for any amount due shall be made out to Texas Commission on Environmental Quality and mailed to:

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

Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

5. 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.

6. 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.

7. Other SEPs by TCEQ or Other Agencies

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