

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 41124  
PRECISION PROCESSING, INC., MICHAEL SMITH, AND TERESA SMITH  
RN101479178  
Docket No. 2011-0311-MSW-E

**Order Type:**

Default Order (SOAH evidentiary hearing)

**Media:**

MSW

**Small Business:**

Yes

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

1.3 miles west of State Highway 152/FM2171, 1000 feet South of State Highway 152, Borger, Hutchison County

**Type of Operation:**

landfill

**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:** May 10, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$8,500

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

**Total Due to General Revenue:** \$8,500

**Compliance History Classifications:**

Person/CN –High (Precision Processing, Inc.); Average (Michael Smith and Teresa Smith)  
Site/RN –High (Precision Processing, Inc.); Average by Default (Michael Smith and Teresa Smith)

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2002

**Investigation Information**

**Complaint Date(s):** N/A

**Date(s) of Investigation:** December 2, 2010

**Date(s) of NOV(s):** N/A

**Date(s) of NOE(s):** January 26, 2011

**Violation Information**

1. Failed to provide adequate final cover for a municipal solid waste ("MSW") landfill, failed to comply with closure requirements, and failed to certify final closure of the landfill [30 TEX. ADMIN. CODE §§ 330.165(f), 330.453, and 330.461].
2. Failed to prevent the unauthorized discharge of MSW from the Facility [TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE § 330.15(a)(1)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Immediately, cease the unauthorized discharge of MSW from the Facility.
2. Within 30 days, remove all discharged MSW from the Facility and adjacent property and properly dispose of it at an authorized facility.
3. Within 45 days, retain an independent licensed professional engineer to prepare and submit a closure plan for the landfill.
4. Within 180 days, complete closure of the Facility.
5. Within 195 days, submit written certification to demonstrate compliance.

**Litigation Information**

**Date Petition(s) Filed:** November 10, 2011

**Date Green Card(s) Signed:** November 16, 2011

**Date Answer(s) Filed:** November 17, 2011 (Precision Processing, Inc.)  
July 31, 2012 (Michael Smith and Teresa Smith)

**SOAH Referral Date:** April 24, 2012

**Hearing Date(s):**

Preliminary hearing: May 31, 2012 (reset); July 31, 2012 (waived)

Evidentiary hearing: September 27, 2012 (reset); January 9, 2013 (reset);  
January 30, 2013 (reset); February 5, 2013 (defaulted)

**Contact Information**

**TCEQ Attorneys:** Jeffrey Huhn, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Blas Coy, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Michael Meyer, Enforcement Division, (512) 239-4492

**TCEQ Regional Contact:** Eddy Vance, Amarillo Regional Office, (806) 353-9251

**Respondents:** Ann Crouch, Vice-President, Precision Processing, Inc., 1715 W. 58<sup>th</sup> Street, Amarillo, Texas 79110; Michael Smith and Teresa Smith, 1006 E. Jefferson, Borger, Texas 79007

**Respondent's Attorney:** Frederic Wolfram, The Wolfram Law Firm, P.C., Chase Tower, 600 S. Tyler Street, Ste. 1406, Amarillo, Texas 79101-2361



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	26-Jan-2010			
	<b>PCW</b>	1-Apr-2013	<b>Screening</b>	7-Feb-2011	<b>EPA Due</b>

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	PRECISION PROCESSING, INC., Michael Smith and Teresa Smith			
<b>Reg. Ent. Ref. No.</b>	RN101479178			
<b>Facility/Site Region</b>	1 - Amarillo	<b>Major/Minor Source</b>	Minor	

## CASE INFORMATION

<b>Enf./Case ID No.</b>	41124	<b>No. of Violations</b>	2
<b>Docket No.</b>	2011-0311-MSW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Michael Meyer
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$8,500
---	-------------------	---------

## 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>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
---------------------------	------------------	--------------------------------	-----

<b>Notes</b>	No adjustment for compliance history.
--------------	---------------------------------------

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
--------------------	----	------------------	-------------------	-----

<b>Notes</b>	The Respondents do not meet the culpability criteria.
--------------	---

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
--	-------------------	-----

<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts	\$2,077	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$45,525	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$8,500
-----------------------------	-----------------------	---------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
--------------	--

<b>Final Penalty Amount</b>	\$8,500
-----------------------------	---------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$8,500
-----------------------------------	-------------------------------	---------

<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
-----------------	------	-----------	-------------------	-----

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

<b>Notes</b>	Deferral not offered for non-expedited settlement.
--------------	--

<b>PAYABLE PENALTY</b>	\$8,500
------------------------	---------

**Screening Date** 7-Feb-2011

**Docket No.** 2011-0311-MSW-E

**PCW**

**Respondent** PRECISION PROCESSING, INC., Michael Smith

*Policy Revision 2 (September 2002)*

**Case ID No.** 41124

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101479178

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Michael Meyer

### 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%

*Please Enter Yes or No*

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** 7-Feb-2011 **Docket No.** 2011-0311-MSW-E **PCW**  
**Respondent** PRECISION PROCESSING, INC., Michael Smith and Teresa  
**Case ID No.** 41124 *Policy Revision 2 (September 2002)*  
**Reg. Ent. Reference No.** RN101479178 *PCW Revision October 30, 2008*  
**Media [Statute]** Municipal Solid Waste  
**Enf. Coordinator** Michael Meyer

**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="25%"/>
	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" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

**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 type="text" value="x"/>	(mark with x)

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

# Economic Benefit Worksheet

**Respondent** PRECISION PROCESSING, INC., Michael Smith and Teresa Smith  
**Case ID No.** 41124  
**Reg. Ent. Reference No.** RN101479178  
**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	\$45,000	2-Dec-2010	31-Oct-2011	0.91	\$2,053	n/a	\$2,053
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to provide final cover for the landfill and to comply with closure requirements. The date required is the investigation date and the final date is the projected 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	\$45,000	<b>TOTAL</b>	\$2,053
----------------------------	----------	--------------	---------

Screening Date 7-Feb-2011 Docket No. 2011-0311-MSW-E

PCW

PRECISION PROCESSING, INC., Michael Smith and Teresa

Respondent Smith

Policy Revision 2 (September 2002)

Case ID No. 41124

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101479178

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 330.15(a)(1) and Tex. Water Code § 26.121(a)

Violation Description Failed to prevent the unauthorized discharge of MSW from the Facility. Specifically, MSW was observed migrating off-site due to eroded or inadequate cover material.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

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 as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 67 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the December 2, 2010 investigation date of the February 7, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

The Respondents do 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 \$24

Violation Final Penalty Total \$1,000

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

# Economic Benefit Worksheet

**Respondent** PRECISION PROCESSING, INC., Michael Smith and Teresa Smith  
**Case ID No.** 41124  
**Reg. Ent. Reference No.** RN101479178  
**Media** Municipal Solid Waste  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$525	2-Dec-2010	31-Oct-2011	0.91	\$24	n/a	\$24
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 and properly dispose of the MSW which has migrated off-site. The date required is the investigation date and the final date is the projected 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 \$525

**TOTAL** \$24

## Compliance History

Customer/Respondent/Owner-Operator: CN600770929 Precision Processing, Inc. Classification: HIGH Rating: 0.00  
 Regulated Entity: RN101479178 PRECISION PROCESSORS Classification: HIGH Site Rating: 0.00  
 ID Number(s): MUNICIPAL SOLID WASTE DISPOSAL PERMIT 647  
 Location: 1.3 mile west of State Highway 152 and Farm to Market 2171 and 1000 feet south of State Highway 152, near Borger, Texas  
 TCEQ Region: REGION 01 - AMARILLO  
 Date Compliance History Prepared: March 03, 2011  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: March 03, 2006 to March 03, 2011  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Michael Meyer Phone: 239 - 4492

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

### Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
    - 1 02/29/2008 (614979)
    - 2 01/26/2011 (884719)
  - 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: CN603337841 Michael E. Smith Classification: AVERAGE Rating: 3.01  
 Regulated Entity: RN101479178 PRECISION PROCESSORS Classification: AVERAGE BY DEFAULT Site Rating: 3.01  
 ID Number(s): MUNICIPAL SOLID WASTE DISPOSAL PERMIT 647  
 Location: 1.3 mile west of State Highway 152 and Farm to Market 2171 and 1000 feet south of State Highway 152, near Borger, Texas  
 TCEQ Region: REGION 01 - AMARILLO  
 Date Compliance History Prepared: March 03, 2011  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: March 03, 2006 to March 03, 2011  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Michael Meyer Phone: 239 - 4492

### 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: CN603337858 Teresa L. Smith Classification: AVERAGE Rating: 3.01  
 Regulated Entity: RN101479178 PRECISION PROCESSORS Classification: AVERAGE BY DEFAULT Site Rating: 3.01  
 ID Number(s): MUNICIPAL SOLID WASTE DISPOSAL PERMIT 647  
 Location: 1.3 mile west of State Highway 152 and Farm to Market 2171 and 1000 feet south  
 of State Highway 152, near Borger, Texas  
 TCEQ Region: REGION 01 - AMARILLO  
 Date Compliance History Prepared: March 03, 2011  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: March 03, 2006 to March 03, 2011  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Michael Meyer Phone: 239 - 4492

### 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

**THIS PAGE INTENTIONALLY LEFT BLANK**

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
PRECISION PROCESSING, INC.,  
MICHAEL SMITH, AND  
TERESA SMITH;  
RN101479178**

§  
§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2011-0311-MSW-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondents. The respondents made the subject of this Order are Precision Processing, Inc., Michael Smith, and Teresa Smith (collectively "Respondents").

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

### **FINDINGS OF FACT**

1. Precision Processing, Inc. owned and operated, and Michael Smith and Teresa Smith own, a landfill located 1.3 miles west of State Highway 152/FM2171, 1000 feet South of State Highway 152 in Borger, Hutchison County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361, and adjoins, is contiguous with, surrounds, or is near or adjacent to state water as defined in TEX. WATER CODE § 26.001(5).
2. During an investigation conducted on December 2, 2010, a TCEQ Amarillo Regional Office investigator documented that Respondents:
  - a. Failed to provide adequate final cover for a MSW landfill, failed to comply with closure requirements, and failed to certify final closure of the landfill; and
  - b. Failed to prevent the unauthorized discharge of MSW from the Facility. Specifically, MSW was observed migrating off-site due to eroded or inadequate cover material.
3. Respondents received notice of the violations on or about November 16, 2011.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Bob Paris, Ann Crouch,<sup>1</sup> Precision Processing, Inc., Michael Smith, and Teresa Smith" (the "EDPRP") in the TCEQ Chief Clerk's office on November 10, 2011.

---

<sup>1</sup> Bob Paris and Ann Crouch were dismissed from the suit on January 23, 2013 (SOAH Order No. 6).

5. By letters dated November 10, 2011, sent to each Respondents' last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served each Respondent with notice of the EDPRP. According to the return receipt "green cards," each Respondent received notice of the EDPRP on November 16, 2011, as evidenced by the signatures on the cards.
6. Precision Processing, Inc.. filed an answer requesting a hearing on November 17, 2011, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on April 24, 2012. Michael Smith and Teresa Smith filed an answer on July 31, 2012.
7. On November 30, 2012, the Administrative Law Judge ("ALJ") issued Order No. 5, which set the evidentiary hearing for February 5, 2013. The SOAH docket clerk mailed a copy of Order No. 5 to each Respondent at their last known address via first class mail, postage pre-paid.
8. On February 5, 2013, the ALJ convened the evidentiary hearing. Respondents failed to appear, and the Executive Director requested that the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.
9. On February 5, 2013, the ALJ entered a finding that each Respondent was served with proper notice of the hearing, and remanded the matter to the Executive Director by SOAH Order No. 7 so that TCEQ may dispose of this case on a default basis.

#### **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, TEX. WATER CODE ch. 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondents failed to provide adequate final cover for a MSW landfill, failed to comply with closure requirements, and failed to certify final closure of the landfill, in violation of 30 TEX. ADMIN. CODE §§ 330.165(f), 330.453, and 330.461.
3. As evidenced by Finding of Fact No. 2.b., Respondents failed to prevent the unauthorized discharge of MSW from the Facility, in violation of TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE § 330.15(a)(1).
4. As evidenced by Finding of Fact No. 6, each Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
5. As evidenced by Finding of Fact No. 7, each Respondent was provided proper notice of the evidentiary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.
6. As evidenced by Findings of Fact Nos. 8 and 9, Respondents failed to appear for the evidentiary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).

7. 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.
8. An administrative penalty in the amount of eight thousand five hundred dollars (\$8,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

#### **ORDERING PROVISIONS**

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

1. Respondents are assessed an administrative penalty in the amount of eight thousand five hundred dollars (\$8,500.00) 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 Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Precision Processing, Inc., Michael Smith, and Teresa Smith; Docket No. 2011-0311-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
3. Respondents shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Respondents shall cease the unauthorized discharge of MSW from the Facility.
  - b. Within 30 days after the effective date of this Order, Respondents shall remove all discharged MSW from the Facility and adjacent property and properly dispose of it at an authorized facility.
  - c. Within 45 days after the effective date of this Order, Respondents shall retain an independent licensed professional engineer to prepare and submit a closure plan for the landfill, in accordance with 30 TEX. ADMIN. CODE Ch. 330, Subchapter K. The closure plan shall be submitted to:  

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

with a copy to:

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

- d. Respondents shall respond completely and adequately, as determined by the TCEQ, to any requests for information from the TCEQ regarding the closure plan referenced in Ordering Provision No. 3.c., within 30 days of such request or by any other deadline specified in writing by the TCEQ.
- e. Within 180 days after the effective date of this Order, Respondents shall complete closure of the Facility in accordance with 30 TEX. ADMIN. CODE Ch. 330, Subchapter K.
- f. Within 195 days after the effective date of this Order, Respondents shall submit written certification to demonstrate compliance with Ordering Provisions No. 3.a. through 3.c. and 3.e. The certifications shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

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

and:

Eddie Vance, Water Section Manager  
Amarillo Regional Office  
Texas Commission on Environmental Quality  
3918 Canyon Drive  
Amarillo, Texas 79109-4933

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondents' failure to comply is not a violation of

- this 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.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
  8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
  9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
  10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

**AFFIDAVIT OF JEFFREY J. HUHN**

**STATE OF TEXAS**

§

**COUNTY OF BEXAR**

§

§

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of of Bob Paris, Ann Crouch, Precision Processing Inc, Michael Smith, and Theresa Smith" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 10, 2011.

Precision Processing Inc filed an answer requesting a hearing on November 17, 2011. Michael Smith and Theresa Smith filed an answer requesting a hearing on July 31, 2012. The matter was referred to the State Office of Administrative Hearings ("SOAH") on April 24, 2012. On November 30, 2012, the Administrative Law Judge ("ALJ") issued Order No. 5, which set the evidentiary hearing for February 5, 2013. The SOAH docket clerk mailed a copy of Order No. 5 to each Respondent at their last known address via first class mail, postage pre-paid.

Respondents failed to appear at the hearing on February 5, 2013. At that hearing, I requested that the ALJ enter a finding that each Respondent was served with proper notice of the evidentiary hearing and the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives the ALJ the authority to remand the case back to the TCEQ for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

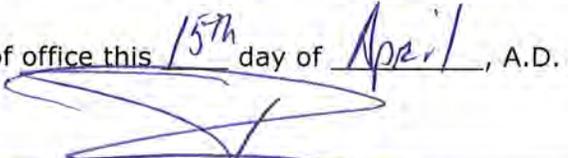
The ALJ remanded the matter to the Executive Director by SOAH Order No. 7, Granting Motion to Remand, issued on February 5, 2013, so that TCEQ may dispose of this case on a default basis."

  
\_\_\_\_\_  
Jeffrey J. Huhn, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 15<sup>th</sup> day of April, A.D. 2013.



  
\_\_\_\_\_  
Notary Signature