

**Executive Summary – Enforcement Matter – Case No. 47649
WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC.
RN106886443, RN105209183, and RN105209175
Docket No. 2013-1998-MLM-E**

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM - AIR, MSW, WQ

Small Business:

No

Location(s) Where Violation(s) Occurred:

Whittlesey Landscaping Supplies - Kingsland, 822 County Road 321, Kingsland, Llano County ("Kingsland Facility")

Whittlesey Landscape Supplies & Recycling Greenlawn, 3551 Greenlawn Boulevard, Round Rock, Travis County ("Greenlawn Facility")

Whittlesey Landscape Supplies & Recycling Dalton, 629 Dalton Lane, Austin, Travis County ("Dalton Facility")

Type of Operation:

Aggregate production operation ("APO") and recycling facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainants have expressed an interest in this matter but do not wish to speak at Agenda.

Texas Register Publication Date: September 12, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$21,768

Amount Deferred for Expedited Settlement: \$4,352

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$441

Total Due to General Revenue: \$16,975

Payment Plan: 35 payments of \$485 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications (Kingsland Facility):

Person/CN - Satisfactory

Site/RN - Unclassified

Compliance History Classifications (Greenlawn Facility):

Person/CN - Satisfactory

Site/RN - Satisfactory

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Docket No. 2013-1998-MLM-E**

Compliance History Classifications (Dalton Facility):

Person/CN - Satisfactory

Site/RN - High

Major Source: No

Statutory Limit Adjustment: \$4,500

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): January 28, 2011 and January 31, 2011

Complaint Information: Alleged that several fuel spills had occurred on the Respondent's property. The spills were occurring near an on-site 500-gallon fuel tank located at the entrance to the brush yard. The second complaint alleged that a 150-gallon hydraulic oil spill from the center screener had not been cleaned up, diesel spills from the above-ground diesel tank had not been cleansed, equipment was power washed and the water uncontained, and there was no erosion/run-off control around the piles.

Date(s) of Investigation: August 15, 2013, November 18, 2013, and November 19, 2013

Date(s) of NOE(s): September 3, 2013 and January 17, 2014

Violation Information

At the Kingsland Facility:

1. Failed to register the Facility as an APO by June 30, 2013 [30 TEX. ADMIN. CODE § 342.25].
2. Failed to obtain authorization to discharge stormwater associated with industrial activities at the Facility under Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") No. TXR050000 [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].
3. Failed to obtain authorization for a New Source Review ("NSR") Permit prior to operation of a new or existing Facility which may emit air contaminants into the air [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].

At the Greenlawn Facility:

1. Failed to obtain authorization to discharge stormwater associated with industrial activities under TPDES MSGP No. TXR050000 [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].
2. Failed to demonstrate proof of financial assurance sufficient to cover all closure costs.

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Specifically, financial assurance was maintained in the amount of \$5,813 to cover 3,250 cubic yards of material. However, the Facility currently stores approximately 28,170 cubic yards of material [30 TEX. ADMIN. CODE § 328.5(f)(3)].

3. Failed to provide a written cost estimate showing the cost of hiring a third party to close the Greenlawn Facility by disposition of all processed and unprocessed materials. Specifically, L&M Woodwaste Recycling, Inc. is listed as the Facility's third party and they are no longer in operation [30 TEX. ADMIN. CODE § 328.5(c)].

At the Dalton Facility:

1. Failed to obtain authorization to discharge stormwater associated with industrial activities under TPDES MSGP No. TXR050000 [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].

2. Failed to demonstrate proof of financial assurance sufficient to cover all closure costs. Specifically, financial assurance was maintained in the amount of \$5,170 to cover 3,000 cubic yards of material. However, the Facility currently stores approximately 58,000 cubic yards of material [30 TEX. ADMIN. CODE § 328.5(f)(3)].

3. Failed to provide a written cost estimate showing the cost of hiring a third party to close the Dalton Facility by disposition of all processed and unprocessed materials. Specifically, L&M Woodwaste Recycling, Inc. is listed as the Facility's third party and they are no longer in operation [30 TEX. ADMIN. CODE § 328.5(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

a. At the Kingsland Facility:

i. Within 30 days:

(1) Develop and begin implementing a stormwater pollution prevention plan ("SWPPP") to comply with the requirements of TPDES MSGP No. TXR050000;

(2) Submit a Notice of Intent ("NOI") and associated fees;

(3) Submit an application to register the Facility as an APO; and

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(4) Submit an NSR Permit application.

ii. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit applications within 30 days after the date of such requests, or by any other deadline specified in writing;

iii. Within 45 days, submit written certification that the registration to operate an APO and authorization to discharge stormwater has been obtained or that operations have ceased until such time that appropriate authorizations are obtained; and

iv. Within 180 days, submit written certification that either authorization to operate a source of air emissions has been obtained or that operation has ceased until such time that appropriate authorization is obtained.

b. At the Greenlawn Facility:

i. Within 30 days:

(1) Develop and begin implementing a SWPPP to comply with the requirements of TPDES MSGP No. TXR050000;

(2) Submit an NOI and associated fees;

(3) Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing;

(4) Submit an updated cost closure estimate for the current amount of combustible materials stored outdoors; and

(5) Submit documentation to demonstrate acceptable financial assurance for the cost closure estimate.

ii. Within 45 days:

(1) Submit written certification that authorization to discharge stormwater has been obtained or that operations have ceased until such time that appropriate authorization is obtained;

(2) Remove all accumulated materials that are in excess of the types and amounts represented in or by the financial assurance and dispose of them at an authorized facility; and

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(3) Submit submit written certification of compliance with Ordering Provision b.i.(5).

iii. Within 60 days, submit written certification of compliance with Ordering Provision b.ii.(2).

c. At the Dalton Facility:

i. Within 30 days:

(1) Develop and begin implementing a SWPPP to comply with the requirements of TPDES MSGP No. TXR050000;

(2) Submit an NOI and associated fees;

(3) Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing;

(4) Submit an updated cost closure estimate for the current amount of combustible materials stored outdoors; and

(5) Submit documentation to demonstrate acceptable financial assurance for the cost closure estimate.

ii. Within 45 days:

(1) Submit written certification that authorization to discharge stormwater from Dalton Facility has been obtained or that operations have ceased until such time that appropriate authorization is obtained;

(2) Remove all accumulated materials that are in excess of the types and amounts represented in or by the financial assurance and dispose of them at an authorized facility; and

(3) Submit written certification of compliance with Ordering Provision c.i.(5).

iii. Within 60 days, submit written certification of compliance with Ordering Provision c.ii.(2).

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

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Docket No. 2013-1998-MLM-E**

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Christopher Bost, Enforcement Division,
Enforcement Team 1, MC 169, (512) 239-4575; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: Blake Whittlesey, Operations Manager, WHITTLESEY LANDSCAPE
SUPPLIES AND RECYCLING, INC., 3219 South IH-35, Round Rock, Texas 78664

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	3-Sep-2013	Screening	12-Sep-2013	EPA Due	
	PCW	23-Oct-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Kingsland Facility")		
Reg. Ent. Ref. No.	RN106886443		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	47649	No. of Violations	1
Docket No.	2013-1998-MLM-E	Order Type	1660
Media Program(s)	Aggregate Production Operation	Government/Non-Profit	No
Multi-Media	Water Quality and Air	Enf. Coordinator	Heather Brister
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$5,000	Maximum	\$10,000
		Violation Maximum	\$25,000

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	\$30
Approx. Cost of Compliance	\$450

*Capped at the Total EB \$ Amount

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**

Notes

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 12-Sep-2013

Docket No. 2013-1998-MLM-E

PCW

Respondent ("Kingsland Facility")

Policy Revision 3 (September 2011)

Case ID No. 47649

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106886443

Media [Statute] Aggregate Production Operation

Enf. Coordinator Heather Brister

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 judgments 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)**

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

No adjustment for compliance history.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 0%

Screening Date 12-Sep-2013

Docket No. 2013-1998-MLM-E

PCW

WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Kingsland Facility")

Policy Revision 3 (September 2011)

Respondent Case ID No. 47649

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106886443

Media [Statute] Aggregate Production Operation

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 342.25

Violation Description Failed to register the Facility as an aggregate production operation by June 30, 2013.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (0.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (5.0%).

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1 Number of violation days 28

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event. 'x' is marked under 'single event'.

Violation Base Penalty \$500

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A. 'x' is marked under 'N/A'.

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

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$30

Violation Final Penalty Total \$500

This violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Kingsland Facility")
Case ID No. 47649
Reg. Ent. Reference No. RN106886443
Media Aggregate Production Operation
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$450	30-Jun-2013	31-Oct-2014	1.34	\$30	n/a	\$30
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to register as an aggregate production operation. Date required is the date the registration was due. Final date is the estimated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$450

TOTAL

\$30

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.	<input type="text" value="47649"/>	No. of Violations	<input type="text" value="2"/>
Docket No.	<input type="text" value="2013-1998-MLM-E"/>	Order Type	<input type="text" value="1660"/>
Media Program(s)	<input type="text" value="Air"/>	Government/Non-Profit	<input type="text" value="No"/>
Multi-Media	<input type="text" value="Water Quality and Aggregate Production Operations"/>	Enf. Coordinator	<input type="text" value="Heather Brister"/>
Admin. Penalty \$ Limit Minimum	<input type="text" value="\$0"/>	EC's Team	<input type="text" value="Enforcement Team 1"/>
Maximum	<input type="text" value="\$25,000"/>		

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

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 indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)
 Notes

PAYABLE PENALTY

Screening Date 12-Sep-2013

Docket No. 2013-1998-MLM-E

PCW

WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC.

Respondent ("Kingsland Facility")

Policy Revision 3 (September 2011)

Case ID No. 47649

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106886443

Media [Statute] Air

Enf. Coordinator Heather Brister

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Adjustment Percentage (Subtotal 2)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date 12-Sep-2013

Docket No. 2013-1998-MLM-E

PCW

Respondent ("Kingsland Facility")

WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC.

Policy Revision 3 (September 2011)

Case ID No. 47649

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106886443

Media [Statute] Air

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)

Violation Description Failed to obtain authorization for a New Source Review Permit prior to operation of a new or existing Facility which may emit air contaminants into the air, as documented during an investigation conducted on August 15, 2013.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0.0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			5.0%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 28

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

Violation Base Penalty \$1,250

One monthly event is recommended from the investigation date (August 15, 2013) to the screening date (September 12, 2013).

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Estimated EB Amount \$334

Statutory Limit Test

Violation Final Penalty Total \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

Economic Benefit Worksheet

Respondent WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Kingsland Facility")

Case ID No. 47649

Reg. Ent. Reference No. RN106886443

Media Air

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$5,000	30-Jun-2013	31-Oct-2014	1.34	\$334	n/a	\$334
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain the proper authorization for the Facility. Date required is the date the permit was due. Final date is the anticipated 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

\$5,000

TOTAL

\$334

Screening Date 12-Sep-2013

Docket No. 2013-1998-MLM-E

PCW

WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC.

Respondent ("Kingsland Facility")

Policy Revision 3 (September 2011)

Case ID No. 47649

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106886443

Media [Statute] Air

Enf. Coordinator Heather Brister

Violation Number 2

Rule Cite(s)

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

Violation Description

Failed to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector General Permit No. TXR050000, as documented during an investigation conducted on August 15, 2013.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

28 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One monthly event is recommended from the investigation date (August 15, 2013) to the screening date (September 12, 2013).

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$121

Violation Final Penalty Total \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

Economic Benefit Worksheet

Respondent WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Kingsland Facility")
Case ID No. 47649
Reg. Ent. Reference No. RN106886443
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,000	15-Aug-2013	31-Oct-2014	1.21	\$121	n/a	\$121
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost associated with preparing and submitting a Notice of Intent to obtain authorization and developing and implementing a stormwater pollution prevention plan. Date required is the investigation date. 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 \$2,000

TOTAL \$121

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN600407431, RN106886443, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN600407431, WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. **Classification:** SATISFACTORY **Rating:** 1.87

Regulated Entity: RN106886443, WHITTLESEY LANDSCAPING SUPPLIES- KINGSLAND **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 3 **Repeat Violator:** NO

CH Group: 04 - Mining

Location: 822 COUNTY ROAD 321 KINGSLAND, TX 78639-3229, LLANO COUNTY

TCEQ Region: REGION 11 - AUSTIN

ID Number(s): **WATER QUALITY NON PERMITTED ID NUMBER** R11106886443

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: April 14, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 14, 2009 to April 14, 2014

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Heather Brister **Phone:** (254) 761-3034

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, 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

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

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.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	20-Jan-2014			
	PCW	5-Feb-2014	Screening	3-Feb-2014	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Dalton Facility")			
Reg. Ent. Ref. No.	RN105209183			
Facility/Site Region	11-Austin	Major/Minor Source	Minor	

CASE INFORMATION

Enf./Case ID No.	47649	No. of Violations	3
Docket No.	2013-1998-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Water Quality	Enf. Coordinator	Heather Brister
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$6,250
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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	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$525
 Approx. Cost of Compliance: \$5,836
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,250
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OTHER FACTORS AS JUSTICE MAY REQUIRE	4.1%	Adjustment	\$259
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost associated with Violation No. 2.

Final Penalty Amount	\$6,509
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,509
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,301
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$5,208
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Screening Date 3-Feb-2014

Docket No. 2013-1998-MLM-E

PCW

WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC.

Respondent ("Dalton Facility")

Policy Revision 3 (September 2011)

Case ID No. 47649

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105209183

Media [Statute] Municipal Solid Waste

Enf. Coordinator Heather Brister

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 3-Feb-2014

Docket No. 2013-1998-MLM-E

PCW

Respondent WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC.
("Dalton Facility")

Policy Revision 3 (September 2011)

Case ID No. 47649

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105209183

Media [Statute] Municipal Solid Waste

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s)

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

Violation Description

Failed to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollution Discharge Elimination System Multi-Sector General Permit No. TXR050000, as documented during an investigation conducted on November 18, 2013.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3

77 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

Three monthly events are recommended from the investigation date (November 18, 2013) to the screening date (February 3, 2014).

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$238

Violation Final Penalty Total \$3,905

This violation Final Assessed Penalty (adjusted for limits) \$3,905

Economic Benefit Worksheet

Respondent WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Dalton Facility")
Case ID No. 47649
Reg. Ent. Reference No. RN105209183
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				0.00	\$0	n/a	\$0
Permit Costs	\$5,000	18-Nov-2013	31-Oct-2014	0.95	\$238	n/a	\$238
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to obtain a permit for stormwater discharges associated with industrial activity and to implement and develop a stormwater prevention pollution plan. Date required is the investigation date and final date is the anticipated 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	\$5,000	TOTAL	\$238
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Screening Date 3-Feb-2014

Docket No. 2013-1998-MLM-E

PCW

WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC.

Respondent ("Dalton Facility")

Policy Revision 3 (September 2011)

Case ID No. 47649

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105209183

Media [Statute] Municipal Solid Waste

Enf. Coordinator Heather Brister

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 328.5(f)(3)

Violation Description

Failed to demonstrate proof of financial assurance sufficient to cover all closure costs, as documented during an investigation conducted on November 18, 2013. Specifically, financial assurance was maintained in the amount of \$5,170 to cover 3,000 cubic yards of material. However, the Facility currently stores approximately 58,000 cubic yards of material.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

77 Number of violation days

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

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$259

Violation Final Penalty Total \$1,302

This violation Final Assessed Penalty (adjusted for limits) \$1,302

Economic Benefit Worksheet

Respondent WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Dalton Facility")
Case ID No. 47649
Reg. Ent. Reference No. RN105209183
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	\$500	18-Nov-2013	31-Oct-2014	0.95	\$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 delayed cost to remove accumulated materials that are in excess of the types and amounts represented in or by the financial assurance and dispose of them at an authorized facility. Date required is the 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]	\$236	18-Nov-2012	18-Nov-2013	1.92	\$23	\$236	\$259
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for the closure of the Facility based on the closure cost estimate worksheet submitted to the TCEQ Austin Regional Office. The date required is one year prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$736

TOTAL

\$282

Screening Date 3-Feb-2014

Docket No. 2013-1998-MLM-E

PCW

WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC.

Respondent ("Dalton Facility")

Policy Revision 3 (September 2011)

Case ID No. 47649

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105209183

Media [Statute] Municipal Solid Waste

Enf. Coordinator Heather Brister

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 328.5(c)

Violation Description Failed to provide a written cost estimate showing the cost of hiring a third party to close the Facility by disposition of all processed and unprocessed materials, as documented during an investigation conducted on November 18, 2013. Specifically, L&M Woodwaste Recycling, Inc. is listed as the Facility's third party and they are no longer in operation.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

77 Number of violation days

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

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$1,302

This violation Final Assessed Penalty (adjusted for limits) \$1,302

Economic Benefit Worksheet

Respondent WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Dalton Facility")
Case ID No. 47649
Reg. Ent. Reference No. RN105209183
Media Municipal Solid Waste
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				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)	\$100	18-Nov-2013	31-Oct-2014	0.95	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to submit an accurate cost closure estimate. The date required is the investigation date and the final date is the anticipated 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

\$100

TOTAL

\$5



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN600407431, RN105209183, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN600407431, WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. **Classification:** SATISFACTORY **Rating:** 1.87

Regulated Entity: RN105209183, WHITTLESEY LANDSCAPE SUPPLIES & RECYCLING DALTON **Classification:** HIGH **Rating:** 0.00

Complexity Points: 3 **Repeat Violator:** NO

CH Group: 05 - Chemical Manufacturing

Location: 629 DALTON LN AUSTIN, TX 78742-1810, TRAVIS COUNTY

TCEQ Region: REGION 11 - AUSTIN

ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 100153

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: April 14, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 14, 2009 to April 14, 2014

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Heather Brister

Phone: (254) 761-3034

Site and Owner/Operator History:

- 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? YES
- 3) If **YES** for #2, who is the current owner/operator? Whittlesey Landscape Supplies and Recycling, Inc. OWNER OPERATOR since 7/28/2010
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? Shumaker Enterprises, Inc., OWNER OPERATOR, 1/1/1800 to 7/28/2010
- 5) If **YES**, when did the change(s) in owner or operator occur? 7/28/2010

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

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.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

DATES	Assigned	20-Jan-2014	Screening	3-Feb-2014	EPA Due	
	PCW	5-Feb-2014				

RESPONDENT/FACILITY INFORMATION			
Respondent	WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Greenlawn Facility")		
Reg. Ent. Ref. No.	RN105209175		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	47649	No. of Violations	3	
Docket No.	2013-1998-MLM-E	Order Type	1660	
Media Program(s)	Water Quality	Government/Non-Profit	No	
Multi-Media	Municipal Solid Waste	Enf. Coordinator	Heather Brister	
		EC's Team	Enforcement Team 1	
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$6,250**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **20.0%** Enhancement **Subtotals 2, 3, & 7** **\$1,250**

Notes: Enhancement for one order with denial of liability.

Culpability **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts: \$524
 Approx. Cost of Compliance: \$5,836
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$7,500**

OTHER FACTORS AS JUSTICE MAY REQUIRE **3.5%** **Adjustment** **\$259**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost associated with Violation No. 2.

Final Penalty Amount **\$7,759**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$7,759**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$1,551**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **\$6,208**

Screening Date 3-Feb-2014

Docket No. 2013-1998-MLM-E

PCW

WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC.

Respondent ("Greenlawn Facility")

Policy Revision 3 (September 2011)

Case ID No. 47649

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105209175

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

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>)	1	20%
	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) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 20%

Screening Date 3-Feb-2014

Docket No. 2013-1998-MLM-E

PCW

WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC.

Respondent ("Greenlawn Facility")

Policy Revision 3 (September 2011)

Case ID No. 47649

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105209175

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 1

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

Violation Description Failed to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollution Discharge Elimination System Multi-Sector General Permit No. TXR050000 for stormwater, as documented during an investigation conducted on November 19, 2013.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>>> Programmatic Matrix

Matrix Notes	Falsification				Percent
	Major	Moderate	Minor		
	x				5.0%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3 Number of violation days 76

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

Violation Base Penalty \$3,750

Three monthly events are recommended from the investigation date (November 19, 2013) to the screening date (February 3, 2014).

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$237

Violation Final Penalty Total \$4,655

This violation Final Assessed Penalty (adjusted for limits) \$4,655

Economic Benefit Worksheet

Respondent WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Greenlawn Facility")
Case ID No. 47649
Reg. Ent. Reference No. RN105209175
Media Water Quality
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$5,000	19-Nov-2013	31-Oct-2014	0.95	\$237	n/a	\$237
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to obtain a permit for stormwater discharges associated with industrial activity and to implement and develop a stormwater pollution prevention plan. Date required is the investigation date and final date is the anticipated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$5,000

TOTAL

\$237

Screening Date 3-Feb-2014

Docket No. 2013-1998-MLM-E

PCW

Respondent WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC.
("Greenlawn Facility")

Policy Revision 3 (September 2011)

Case ID No. 47649

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105209175

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 328.5(f)(3)

Violation Description

Failed to demonstrate proof of financial assurance sufficient to cover all closure costs, as documented during an investigation conducted on November 19, 2013. Specifically, financial assurance was maintained in the amount of \$5,813 to cover 3,250 cubic yards of material. However, the Facility currently stores approximately 28,170 cubic yards of material.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

76 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$259

Violation Final Penalty Total \$1,552

This violation Final Assessed Penalty (adjusted for limits) \$1,552

Economic Benefit Worksheet

Respondent WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Greenlawn Facility")
Case ID No. 47649
Reg. Ent. Reference No. RN105209175
Media Water Quality
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	\$500	19-Nov-2013	31-Oct-2014	0.95	\$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 delayed cost to remove accumulated materials that are in excess of the types and amounts represented in or by the financial assurance and dispose of them at an authorized facility. Date required is the 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]	\$236	19-Nov-2012	19-Nov-2013	1.92	\$23	\$236	\$259
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs Estimated cost to provide financial assurance for the closure of the Facility based on the closure cost estimate worksheet submitted to the TCEQ Austin Regional Office. The date required is one year prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance \$736

TOTAL \$282

Screening Date 3-Feb-2014

Docket No. 2013-1998-MLM-E

PCW

WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC.

Respondent ("Greenlawn Facility")

Policy Revision 3 (September 2011)

Case ID No. 47649

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105209175

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 328.5(c)

Violation Description Failed to provide a written cost estimate showing the cost of hiring a third party to close the Facility by disposition of all processed and unprocessed materials, as documented during an investigation conducted on November 19, 2013. Specifically, L&M Woodwaste Recycling, Inc. is listed as the Facility's third party and they are no longer in operation.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0.0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			5.0%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 76

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

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$1,552

This violation Final Assessed Penalty (adjusted for limits) \$1,552

Economic Benefit Worksheet

Respondent WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Greenlawn Facility")
Case ID No. 47649
Reg. Ent. Reference No. RN105209175
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				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)	\$100	19-Nov-2013	31-Oct-2014	0.95	\$5	n/a	\$5

Notes for DELAYED costs

The other delayed cost is to submit an accurate cost closure estimate. The date required is the investigation date and the final date is the anticipated 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

\$100

TOTAL

\$5

The TCEQ is committed to accessibility.
To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN600407431, RN105209175, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN600407431, WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. **Classification:** SATISFACTORY **Rating:** 1.87

Regulated Entity: RN105209175, WHITTLESEY LANDSCAPE SUPPLIES & RECYCLING GREENLAWN **Classification:** SATISFACTORY **Rating:** 3.75

Complexity Points: 3 **Repeat Violator:** NO

CH Group: 05 - Chemical Manufacturing

Location: 3551 GREENLAWN BLVD, ROUND ROCK, TX 78664 TRAVIS, TX, TRAVIS COUNTY

TCEQ Region: REGION 11 - AUSTIN

ID Number(s): **MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER** 100152

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: April 14, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 14, 2009 to April 14, 2014

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Heather Brister

Phone: (254) 761-3034

Site and Owner/Operator History:

- 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** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, 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

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: **06/15/2009** ADMINORDER 2008-1929-MSW-E (1660 Order-Agreed Order With Denial)
Classification: Moderate
Citation: 30 TAC Chapter 328, SubChapter A 328.5(h)
Description: Failure to comply with 30 TAC Chapter 328.5(h).

B. Criminal convictions:

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.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	
WHITTLESEY LANDSCAPE	§	TEXAS COMMISSION ON
SUPPLIES AND RECYCLING,	§	
INC.	§	
RN106886443, RN105209183,	§	
AND RN105209175	§	ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2013-1998-MLM-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC. ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TEX. WATER CODE chs. 7, 26, and 28A. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent is a responsible party as defined in TEX. WATER CODE § 28A.001(6), because it is an owner and operator as defined in TEX. WATER CODE § 28A.001(4) and (6) of an aggregate production operation ("APO") located at 822 County Road 321 in Kingsland, Llano County, Texas (the "Kingsland Facility"). Aggregates are being or have been removed or extracted from the Facility's earth. Therefore, the Kingsland Facility is an APO as defined in TEX. WATER CODE § 28A.001(1).
2. The Respondent owns and operates recycling facilities located at 3551 Greenlawn Boulevard in Round Rock, Travis County, Texas (the "Greenlawn Facility") and 629 Dalton Lane in Austin, Travis County, Texas (the "Dalton Facility").
3. The Kingsland Facility adjoins, is contiguous with, surrounds, or is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
4. The Kingsland Facility consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

5. The Greenlawn and Dalton Facilities involve the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
6. The Greenlawn and Dalton Facilities adjoin, are contiguous with, surround, or are near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
7. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
8. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 8, 2013 and on or about January 22, 2014.
9. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
10. An administrative penalty in the amount of Twenty-One Thousand Seven Hundred Sixty-Eight Dollars (\$21,768) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Hundred Forty-One Dollars (\$441) of the administrative penalty and Four Thousand Three Hundred Fifty-Two Dollars (\$4,352) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Sixteen Thousand Nine Hundred Seventy-Five Dollars (\$16,975) of the administrative penalty shall be payable in 35 monthly payments of Four Hundred Eighty-Five Dollars (\$485) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

11. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
12. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).

13. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
14. 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.
15. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facilities, the Respondent is alleged to have:

1. At the Kingsland Facility:
 - a. Failed to register the Facility as an APO by June 30, 2013, in violation of 30 TEX. ADMIN. CODE § 342.25, as documented during an investigation conducted on August 15, 2013;
 - b. Failed to obtain authorization to discharge stormwater associated with industrial activities at the Facility under Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") No. TXR050000, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on August 15, 2013; and
 - c. Failed to obtain authorization for a New Source Review ("NSR") Permit prior to operation of a new or existing Facility which may emit air contaminants into the air, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during an investigation conducted on August 15, 2013.
2. At the Greenlawn Facility:
 - a. Failed to obtain authorization to discharge stormwater associated with industrial activities under TPDES MSGP No. TXR050000, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on November 19, 2013;
 - b. Failed to demonstrate proof of financial assurance sufficient to cover all closure costs, in violation of 30 TEX. ADMIN. CODE § 328.5(f)(3), as documented during an investigation conducted on November 19, 2013. Specifically, financial assurance was maintained in the amount of \$5,813 to cover 3,250 cubic yards of material. However, the Facility currently stores approximately 28,170 cubic yards of material; and

- c. Failed to provide a written cost estimate showing the cost of hiring a third party to close the Greenlawn Facility by disposition of all processed and unprocessed materials, in violation of 30 TEX. ADMIN. CODE § 328.5(c), as documented during an investigation conducted on November 19, 2013. Specifically, L&M Woodwaste Recycling, Inc. is listed as the Facility's third party and they are no longer in operation.
3. At the Dalton Facility:
 - a. Failed to obtain authorization to discharge stormwater associated with industrial activities under TPDES MSGP No. TXR050000, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on November 18, 2013;
 - b. Failed to demonstrate proof of financial assurance sufficient to cover all closure costs, in violation of 30 TEX. ADMIN. CODE § 328.5(f)(3), as documented during an investigation conducted on November 18, 2013. Specifically, financial assurance was maintained in the amount of \$5,170 to cover 3,000 cubic yards of material. However, the Facility currently stores approximately 58,000 cubic yards of material; and
 - c. Failed to provide a written cost estimate showing the cost of hiring a third party to close the Dalton Facility by disposition of all processed and unprocessed materials, in violation of 30 TEX. ADMIN. CODE § 328.5(c), as documented during an investigation conducted on November 18, 2013. Specifically, L&M Woodwaste Recycling, Inc. is listed as the Facility's third party and they are no longer in operation.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 10 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC., Docket No. 2013-1998-MLM-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. It is further ordered that the Respondent shall undertake the following technical requirements:

a. At the Kingsland Facility:

i. Within 30 days after the effective date of this Agreed Order:

(1) Develop and begin implementing a stormwater pollution prevention plan ("SWPPP"), to comply with the requirements of TPDES MSGP No. TXR050000;

(2) Submit a Notice of Intent ("NOI") and associated fees, to:

Stormwater Processing Center
Water Quality Division, MC 228
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

(3) Submit an application to register the Facility as an APO, in accordance with 30 TEX. ADMIN. CODE § 342.25; and

(4) Submit a NSR Permit application, in accordance with 30 TEX. ADMIN. CODE § 116.111 to:

Air Permits Division, MC 163
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

ii. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit applications within 30 days after the date of such requests, or by any other deadline specified in writing;

iii. Within 45 days after the effective date of the Agreed Order, submit written certification that the registration to operate an APO and authorization to discharge stormwater has been obtained or that operations have ceased until such time that appropriate authorizations are obtained, in accordance with Ordering Provision No. 2.d; and

iv. Within 180 days after the effective date of this Agreed Order, submit written certification that either authorization to operate a source of air emissions has been obtained or that operation has ceased until such time that appropriate authorization is obtained, in accordance with Ordering Provision No. 2.d.

b. At the Greenlawn Facility:

- i. Within 30 days after the effective date of this Agreed Order:
 - (1) Develop and begin implementing a SWPPP, to comply with the requirements of TPDES MSGP No. TXR050000;
 - (2) Submit a NOI and associated fees to:

Stormwater Processing Center
Water Quality Division, MC 228
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - (3) Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing;
 - (4) Submit an updated cost closure estimate for the current amount of combustible materials stored outdoors, in accordance with 30 TEX. ADMIN. CODE § 328.5(c) to:

Municipal Solid Waste Permits Section, MC 124
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - (5) Submit documentation to demonstrate acceptable financial assurance for the cost closure estimate, in accordance with 30 TEX. ADMIN CODE § 328.5(f)(3) to:

Financial Assurance Team, MC 184
Texas Commission on Environmental Quality
P.O. Box 13807
Austin, Texas 78711-3087
- ii. Within 45 days after the effective date of the Agreed Order:
 - (1) Submit written certification that authorization to discharge stormwater has been obtained or that operations have ceased until such time that appropriate authorization is obtained, in accordance with Ordering Provision No. 2.d;
 - (2) Remove all accumulated materials that are in excess of the types and amounts represented in or by the financial assurance and dispose of them at an authorized facility; and
 - (3) Submit submit written certification of compliance with Ordering Provision No. 2.b.i(5), in accordance with Ordering Provision No. 2.d below.

- iii. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.b.ii(2), in accordance with Ordering Provision No. 2.d below.
- c. At the Dalton Facility:
- i. Within 30 days after the effective date of this Agreed Order:
 - (1) Develop and begin implementing a SWPPP, to comply with the requirements of TPDES MSGP No. TXR050000;
 - (2) Submit a NOI and associated fees to:
Stormwater Processing Center
Water Quality Division, MC 228
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - (3) Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing;
 - (4) Submit an updated cost closure estimate for the current amount of combustible materials stored outdoors, in accordance with 30 TEX. ADMIN. CODE § 328.5(c) to:

Municipal Solid Waste Permits Section, MC 124
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - (5) Submit documentation to demonstrate acceptable financial assurance for the cost closure estimate, in accordance with 30 TEX. ADMIN CODE § 328.5(f)(3) to:

Financial Assurance Team, MC 184
Texas Commission on Environmental Quality
P.O. Box 13807
Austin, Texas 78711-3087
 - ii. Within 45 days after the effective date of the Agreed Order:
 - (1) Submit written certification that authorization to discharge stormwater from Dalton Facility has been obtained or that operations have ceased until such time that appropriate authorization is obtained, in accordance with Ordering Provision No. 2.d;

- (2) Remove all accumulated materials that are in excess of the types and amounts represented in or by the financial assurance and dispose of them at an authorized facility; and
 - (3) Submit written certification of compliance with Ordering Provision No. 2.c.i(5), in accordance with Ordering Provision No. 2.d below.
- iii. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.c.ii(2), in accordance with Ordering Provision No. 2.d below.
- d. The written certifications required by Ordering Provisions Nos. 2.a.iii, 2.a.iv, 2.b.ii(1), 2.b.ii(3), 2.b.iii, 2.c.ii(1), 2.c.ii(3), and 2.c.iii shall be notarized by a State of Texas Notary Public, include detailed supporting documentation including photographs, receipts, and/or other records, and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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:

Water and Air Section Managers
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facilities operations referenced in this Agreed Order.

4. 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.
5. 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.
6. 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.
7. 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Ronn Mowbray
For the Executive Director

1/7/16
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

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

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

Bl Whittlesey
Signature

8-18-14
Date

Blake Whittlesey
Name (Printed or typed)
Authorized Representative of
WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC.

Operator Manager
Title

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