State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

February 9, 2010

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2010 FEB -9 PM 4:31
CHIEF CLERKS OFFICE

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: **SOAH Docket No. 582-09-3604; TCEQ Docket No. 2008-0289-MSW-E, In the Matter of an Enforcement Action against Michael French d/b/a Hiram Waste & Recycling, Inc., RN104917885**

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than March 1, 2010. Any replies to exceptions or briefs must be filed in the same manner no later than March 11, 2010.

This matter has been designated **TCEQ Docket No. 2008-0289-MSW-E; SOAH Docket No. 582-09-3604**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at http://www10.tceq.state.tx.us/epic/efilings/ or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

Howard S. Seitzman
Administrative Law Judge

HSS/pp
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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300 West 15th Street Suite 502
Austin, Texas 78701
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SERVICE LIST

AGENCY: **Environmental Quality, Texas Commission on (TCEQ)**

STYLE/CASE: **MICHAEL FRENCH AND HIRAM WASTE & RECYCLING INC**

SOAH DOCKET NUMBER: **582-09-3604**

REFERRING AGENCY CASE: **2008-0289-MSW-E**

STATE OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ HOWARD S. SEITZMAN

REPRESENTATIVE / ADDRESS

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

2010 FEB -9 PM 4:41
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TCEQ EXECUTIVE DIRECTOR

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HEATH, TX 75032-5998

(469) 698-9989 (FAX)
(214) 395-6837 (CELL)

MICHAEL FRENCH

xc: Docket Clerk, State Office of Administrative Hearings

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

SOAH DOCKET NO. 582-09-3604
TCEQ DOCKET NO. 2008-0289-MSW-E

2010 FEB -9 PM 4:31

CHIEF CLERKS OFFICE

IN THE MATTER OF	§	**BEFORE THE STATE OFFICE**
	§	
AN ENFORCEMENT ACTION	§	
	§	
AGAINST MICHAEL FRENCH DBA	§	**OF**
	§	
HIRAM WASTE & RECYCLING, INC.;	§	
	§	
RN104917885	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to assess $2,000.00 in administrative penalties against, and require certain corrective actions by, Michael French dba Hiram Waste & Recycling, Inc. (Respondent), for violation of 30 TEX. ADMIN. CODE (TAC) § 330.15(c). Respondent owns real property located on County Road 148, approximately 600 yards southwest of the intersection of County Road 148 and Interstate 20, in Terrell, Kaufman County, Texas (Site). The ED alleges that Respondent failed to prevent the unauthorized disposal of municipal solid waste (MSW) at the Site. As set out below, the Administrative Law Judge (ALJ) recommends that the Commission assess a penalty of $2,000.00 against, and require certain corrective actions by, Respondent.

II. JURISDICTION

Respondent does not dispute the Commission's jurisdiction, so no further discussion regarding notice or jurisdiction is included here. The attached Proposed Order contains the required Findings of Fact and Conclusions of Law.

III. PROCEDURAL HISTORY

On June 18, 2009, a preliminary hearing was held with Respondent appearing *pro se* and the ED appearing through his counsel Anna Treadwell. The ALJ issued Order No. 2 on June 19, 2009, memorializing the preliminary hearing and setting the hearing on the merits for the time, date, and place agreed to by the parties.

At approximately 4:00 p.m. on November 18, 2009, Respondent filed a Motion for Continuance (Continuance Motion) of the hearing on the merits scheduled for 10:00 on November 19, 2009. The Continuance Motion stated Respondent was ill and that contact should be made with Respondent's daughter-in-law Emily L. French. The ED filed a Response to the Continuance Motion at 4:55 p.m. on November 18, 2009, opposing a continuance.

On November 19, 2009, Anna Treadwell, counsel for the ED, appeared with her witnesses at the hearing on the merits. The ALJ convened an off-the-record telephone call with Ms. Treadwell, Ms. Emily French, and, by permission, with Respondent's physician Dr. Robert Sparks. Based upon the representations of Dr. Sparks that Respondent could not travel due to illness, the ED no longer opposed the continuance. As memorialized in Order No. 5 dated November 19, 2009, the hearing on the merits was reset for 9:00 a.m. on December 11, 2009.

On December 11, 2009, the ALJ convened the hearing on the merits. The ED appeared and was represented by Anna Treadwell, staff attorney. Respondent was initially on the telephone but became perturbed when the style of the case was read into the record. He disconnected himself from the call after indicating he would not participate in the hearing on the merits.[1] The hearing proceeded in his absence and the record was closed that same day.

[1] Respondent took offense that Hiram Waste & Recycling, Inc., was used in the style of the case. Respondent's Answer, ED Ex. 2, was filed on behalf of Michael French dba Hiram Waste & Recycling, Inc.

IV. APPLICABLE LAW

The ED alleged that the Site involves the management and/or disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361 and that Respondent violated Commission rule 30 TAC § 330.15(c). The rule states:

> (c) Except as otherwise authorized by this chapter, a person may not cause, suffer, allow, or permit the dumping or disposal of MSW without the written authorization of the commission.

V. ALJ DISCUSSION AND ANALYSIS

This matter had its beginning on September 22, 2006, when a TCEQ environmental investigator conducted an inspection of the Site and observed approximately 14 cubic yards of putrescible waste and 1,500 yards of wood mulch, brush, root balls, and wood boards disposed of at the Site.[2] Mr. French was cited for violating 30 TAC § 330.15(c).[3] Following a failure by Mr. French to appear at the hearing on the merits, the Commission entered a November 13, 2008 Order assessing a $1,000.00 administrative penalty and requiring Mr. French to cease accepting additional waste at the Site.[4] Mr. French was ordered to remove all municipal solid waste and dispose of the wastes at an authorized facility.[5]

The facts upon which this case is premised arise from an October 25, 2007 investigation by Dallas/Ft. Worth Region 4 Environmental Investigator Paula Sen.[6] She was accompanied by Environmental Investigator Dorothy Lewis and Kaufman County Deputy Walter Dykes. The investigation was triggered by a complaint that Hiram Waste & Recycling, Inc., owned by Respondent, was accumulating residential waste receptacles at the Site. That complaint was not substantiated. However, during the investigation Ms. Sen observed "a continuing violation of the solid waste management rules and regulations and a new violation."[7]

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[2] ED Ex. 6, p. 2 at Finding of Fact No. 1.
[3] ED Ex. 6.
[4] ED Ex. 6, pp. 6-7 at Ordering Paragraphs 1 and 2.
[5] ED Ex. 6, p. 7 at Ordering Paragraphs 5 and 6.
[6] Her findings are documented in an investigative report, ED Ex. 7. Included in that exhibit are 25 photographs depicting conditions she observed.
[7] ED Ex. 7 at p. 2.

While in transit to the Site on October 25, 2007, Ms Sen contacted Hiram Waste to notify Mr. French that she would be inspecting the Site. She spoke with Laura French. When Ms. Sen arrived at the Site, she met with Deputy Dykes. The gates to the Site were closed and locked, but Mr. French and others were working on the property. Mr. French denied her access to the Site, so Ms. Sen made observations and took photographs from the perimeter of the property.

Ms. Sen's observations involved unauthorized composting and recycling operations. She observed approximately five cubic yard pile of pallets; 40 cubic yards of mixed wood debris, organic mulch, and entrained plastic; roll-off boxes[8] containing brush, bagged grass, leaves and trash; seven 10- to 20-cubic yard containers (one covered) with unknown contents; and two small chippers located near some wood board and pallet piles. At the rear of the property and above grade, Ms. Sen observed approximately 100 cubic yards of bagged organic mulch, including some ten cubic yards of plastic bags and plastic landscaping trays.[9]

Near the creek in a graded area, plastic and metal trash was observed. Approximately two cubic yards of plastic, brake fluid containers, and PVC waste was in the area of a tree root hole. The previously buried waste apparently became exposed when a tree was uprooted. Ms. Sen also observed an unnatural embankment near the location where waste was being buried during the September 22, 2006 investigation.[10] Ms. Sen also observed a five cubic yard pile of brush and a 40 cubic yard pile of trees.[11]

On January 28, 2008, Sam Barrett, TCEQ Region 4 Waste Section Manager, sent a Notice of Enforcement to Respondent.[12] Ms. Sen, accompanied by TCEQ Region 4 Air Program Environmental Investigator Amy Pritchett,[13] conducted a follow-up investigation on October 16, 2009. Though notified of the Site visit, the Frenches were unavailable and the gate was locked.[14]

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[8] Four were 30-cubic yard boxes and one 20-cubic yard box.
[9] Ed Ex. 7, p. 3.
[10] ED Ex. 7, p. 4.
[11] ED Ex. 7, p. 4.
[12] ED Ex. 7, pp. 9-10.
[13] The complaints regarding outdoor burning are not germane to this proceeding.
[14] ED Ex. 9, p. 4.

Although three trucks were parked near the mobile home located on the Site, no one responded to Ms. Sen's automobile horn.[15] The Site was again inspected from the perimeter.[16]

Toward the northwest property line, Ms. Sen observed some 30 cubic yards of landscape timbers; 220 cubic yards of boards; 120 cubic yards of brush; 130 cubic yards of finer textured organic waste;[17] 120 cubic yards of piled mixed organic waste;[18] a refrigerator; scrap tires; one cubic yard of used shingles; 40 cubic yards of scrap metal; five cubic yards of scrap aluminum; three full dumpsters of unknown material; and two overfilled covered dumpsters. Along the northeast property line, there were 20 metal 55-gallon drums with unknown contents. Aerial filling was observed near the front of the property and subgrade filling was noted at the rear of the property.[19]

Based upon her observations and the photographs depicting the conditions she observed during her October 16, 2009 inspection, Ms. Sen concluded Respondent was accumulating and burying or aerial filling waste and conducting unauthorized composting or recycling operations.[20] Respondent has not registered or filed a Notice of Intent for the Site under the name Michael French or Hiram Waste & Recycling, Inc.[21]

VI. ALJ'S RECOMMENDATION

The photographs and testimony establish that on October 25, 2007, the Site contained an array of materials associated with unauthorized composting and recycling operations, as well as an assortment of waste not associated with composting/recycling operations. The evidence also establishes that the violations of 30 TAC § 330.15(c) remained unabated as of October 16, 2009. The continuing violation shows the need for corrective action.

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[15] ED Ex. 9, p. 4.

[16] Her findings are documented in an investigative report, ED Ex. 9. Included in that exhibit are 26 photographs depicting conditions she observed. An additional 92 photographs taken during the inspection are contained in ED Exhibit 10.

[17] Wood chips, grass, and leaves.

[18] Boards, brush, fine textured organics, and soil.

[19] ED Ex. 9, pp. 4-5.

[20] ED Ex. 9.

[21] ED Ex. 8.

Recyclable material may become a solid waste if it is abandoned or disposed of rather than recycled.[22] Further, Respondent is required to register and file a notice of intent with the Commission and follow certain prescribed rules to be a composter/recycler. Respondent made no filings with the Commission that would categorize his activities as composting or recycling operations. Therefore, the materials constitute waste. Burying plastics and brake fluid containers is also a disposal of waste. Respondent is not authorized to dispose of waste on this Site. Respondent has caused, suffered, allowed, or permitted the dumping or disposal of MSW on the Site without the written authorization of the Commission

The Commission is authorized to assess an administrative penalty against a person who violates provisions of the Texas Water Code within the Commission's jurisdiction or a rule adopted by the Commission or an order or permit issued thereunder. As pertinent to this case, the penalty may not exceed $10,000 per day of violation.[23] Additionally, the Commission may order the violator to take corrective action.[24] The ALJ finds that the administrative penalty recommended by Staff is warranted on the grounds that Respondent violated the environmental laws and regulations as noted above. The ED appropriately considered the factors set forth in TEX. WATER CODE ANN. § 7.053 and followed the Commission's Penalty Policy in calculating the total proposed penalty in the amount of $2,000.00. This amount is not only reasonable, it is extremely lenient. The ED seeks penalties for only two quarterly violations when each day could have been included as separate violations. The ED is not requesting penalties in this proceeding for violations observed during the October 16, 2009 inspection. The ED is not requesting an enhancement based upon the November 13, 2008 Order,[25] nor a penalty for denying inspectors access to the property.

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[22] 30 TAC § 330.3(122).
[23] TEX. WATER CODE ANN. § 7.052(c).
[24] TEX. WATER CODE ANN. § 7.073.
[25] The Penalty Calculation Worksheet screening date of February 14, 2008, was prior to the November 13, 2008 Order.

VII. CONCLUSION

The ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law set for the in the attached Proposed Order concluding that the alleged violations occurred, assessing an administrative penalty of $2,000.00 against Respondent, and requiring corrective action by Respondent.

SIGNED February 9, 2010.

HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER Assessing Administrative Penalties Against and Requiring Corrective Action By MICHAEL FRENCH DBA HIRAM WASTE & RECYCLING, INC. SOAH DOCKET NO. 582-09-3604 TCEQ DOCKET NO. 2008-0289-MSW-E

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against and requiring corrective action by Michael French dba Hiram Waste & Recycling, Inc. (Respondent). Howard S. Seitzman, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on December 11, 2009, in Austin, Texas, and presented the Proposal for Decision.

The parties to the proceeding are Respondent; the Commission's Executive Director (ED), represented by Anna M. Treadwell, attorney in TCEQ's Litigation Division; and the Office of Public Interest Counsel. After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. Respondent owns real property used for an unauthorized landfill located on County Road 148, approximately 600 yards southwest of the intersection of County Road 148 and Interstate 20, in Terrell, Kaufman County, Texas (Site).

2. On October 25, 2007, Dallas/Ft. Worth Region 4 Environmental Investigator Paula Sen, accompanied by Environmental Investigator Dorothy Lewis and Kaufman County Deputy

Walter Dykes, conducted an investigation of the Site.

3. The investigation was triggered by a complaint that Hiram Waste & Recycling, Inc., owned by Respondent, was accumulating residential waste receptacles at the Site. That complaint was not substantiated. However, during the investigation Ms. Sen observed violations of the solid waste management rules and regulations.

4. While in transit to the Site on October 25, 2007, Ms Sen contacted Hiram Waste to notify Mr. French that she would be inspecting the Site. She spoke with Laura French. When Ms. Sen arrived at the Site the gates to the Site were closed and locked. Though Mr. French was at the Site, he denied her access to the Site. Ms. Sen made observations and took photographs from the perimeter of the Site.

5. Ms. Sen's observed and documented unauthorized composting and recycling operations on the Site.

6. Located on the Site were five cubic yard pile of pallets; 40 cubic yards of mixed wood debris, organic mulch, and entrained plastic; roll-off boxes containing brush, bagged grass, leaves and trash; seven 10- to 20-cubic yard containers (one covered) with unknown contents; and two small chippers located near some wood board and pallet piles. At the rear of the property and above grade, were approximately 100 cubic yards of bagged organic mulch, including some ten cubic yards of plastic bags and plastic landscaping trays. Plastic and metal trash was present in a graded area near the creek. Approximately two cubic yards of plastic, brake fluid containers, and PVC waste was in the area of a tree root hole and was exposed when a tree was uprooted. Also present on the Site was a five cubic yard pile of brush and a 40 cubic yard pile of trees.

7. There was an unnatural embankment near the location where waste was being buried during the September 22, 2006 investigation.

8. Respondent has not registered or filed a Notice of Intent for the Site under the name Michael French or Hiram Waste & Recycling, Inc

9. On January 28, 2008, Sam Barrett, TCEQ Region 4 Waste Section Manager, sent a Notice of Enforcement to Respondent.

10. On January 30, 2009, the ED issued the Executive Director's Preliminary Report and Petition (EDPRP) in accordance with TEX. WATER CODE ANN. § 7.054, alleging that Respondent violated 30 TEX. ADMIN. CODE § 330.15(c) by failing to prevent the disposal of municipal solid waste (MSW) at an unauthorized site.

11. The ED recommended the imposition of an administrative penalty in the amount of $2,000.00, and corrective action to bring the site into compliance.

12. Ms. Sen, accompanied by TCEQ Region 4 Air Program Environmental Investigator Amy Pritchett, conducted a follow-up investigation on October 16, 2009. Though notified of the Site visit, the Frenches were unavailable and the gate was locked. Although three trucks were parked near the mobile home located on the Site, no one responded to Ms. Sen's automobile horn. The Site was again inspected from the perimeter.

13. Landscape timbers, boards, brush, textured organic waste, mixed organic waste, a refrigerator, scrap tires, used shingles, scrap metal, scrap aluminum, dumpsters of unknown material, and 55-gallon drums with unknown contents were present on the Site. There was aerial filling near the front of the property and subgrade filling at the rear of the property.

14. During the October 16, 2009 inspection, Respondent was still accumulating and burying or aerial filling waste and conducting unauthorized composting or recycling operations.

15. The proposed penalty is based upon two quarterly violations of $1000.00 each during the period spanning October 25, 2007, through February 14, 2008.

16. The proposed penalty does not include an enhancement for a November 13, 2008 Order based upon Michael French's failure to prevent the disposal of MSW at an unauthorized Site.

17. The proposed penalty does not include violations observed during the October 16, 2009 inspection.

18. The ED does not request a penalty for denying TCEQ inspectors access to the Site.

19. On February 20, 2009, Respondent requested a contested case hearing on the allegations in the EDPRP.

20. On April 2, 2009, the ED requested the case be referred to SOAH and it was referred.

21. On May 11, 2009, the Commission's Chief Clerk issued a notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.

22. On June 18, 2009, a preliminary hearing was held with Respondent and the ED appearing.

23. At approximately 4:00 p.m. on November 18, 2009, Respondent filed a Motion for Continuance (Continuance Motion) of the hearing on the merits scheduled for 10:00 on November 19, 2009. The Continuance Motion stated Respondent was ill and that contact should be made with Respondent's daughter-in-law Emily L. French. The ED filed a Response to the Continuance Motion at 4:55 p.m. on November 18, 2009, opposing a continuance.

24. On November 19, 2009, Anna Treadwell, counsel for the ED, appeared with her witnesses at the hearing on the merits. The ALJ convened an off-the-record telephone call with Ms. Treadwell, Ms. Emily French, and, by permission, with Respondent's physician Dr. Robert Sparks. Based upon the representations of Dr. Sparks that Respondent could not travel due to illness, the ED no longer opposed the continuance. The hearing on the merits was reset to December11, 2009.

25. On December 11, 2009, SOAH ALJ convened the hearing on the merits in a SOAH hearing room in Austin, Texas. The ED appeared and was represented by Anna Treadwell, staff attorney. Respondent was initially on the telephone but became perturbed when the style of the case was read into the record. He disconnected himself from the call after indicating he would not participate in the hearing on the merits. The hearing proceeded in his absence and

the record was closed that same day.

26. The ALJ issued the Proposal for Decision on February 9, 2010.

II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE ANN. § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code , the Texas Health & Safety Code, or any rule, order, or permit adopted or issued thereunder.

2. Under TEX. WATER CODE ANN. § 7.052(c), a penalty may not exceed $10,000 per violation, per day, for the violations at issue in this case.

3. Respondent is subject to the Commission's enforcement authority, pursuant to TEX. WATER CODE ANN. §§ 5.013 and 7.002.

4. Additionally, the Commission may order the violator to take corrective action. TEX. WATER CODE ANN. § 7.073.

5. As required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations or the penalties or corrective actions proposed therein.

6. As required by TEX. GOV'T CODE ANN. §§ 2001. 051(1) and 2001.052; TEX. WATER CODE ANN. § 7.058; 1 TEX. ADMIN. CODE § 155.401, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalties.

7. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

8. A person may not cause, suffer, allow, or permit the dumping or disposal of MSW without the written authorization of the commission. 30 TEX. ADMIN. CODE § 330.15(c).

9. Municipal solid waste is solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste. 30 TEX. ADMIN. CODE § 330.3(88).

10. Recyclable material may become a solid waste if it is abandoned or disposed of rather than recycled. 30 TEX. ADMIN. CODE § 330.3(122).

11. Respondent is not a qualified recycling/composting facility.

12. The Site involves the management and /or disposal of MSW. TEX. HEALTH & SAFETY CODE ch. 361.

13. Respondent violated 30 TEX. ADMIN. CODE § 330.15(c).

14. In determining the amount of an administrative penalty, the Commission must consider several factors, as required by TEX. WATER CODE ANN. § 7.053, including:

- The impact or potential impact on public health and safety, natural resources and their uses, and other persons;
- The nature, circumstances, extent, duration, and gravity of the prohibited act;
- The history and extent of previous violations by the violator;
- The violator's degree of culpability, good faith, and economic benefit gained through the violation;
- The amount necessary to deter future violations; and
- Any other matters that justice may require.

15. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.

16. An administrative penalty of $2,000.00 is justified and should be assessed against

Respondent.

17. Respondent should be required to take the corrective action set forth below.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Michael French dba Hiram Waste & Recycling is assessed an administrative penalty in the amount of $2,000.00 for violations of 30 TEX. ADMIN. CODE § 330.15(c). The payment of this administrative penalty and Mr. French's 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 that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: Michael French dba Hiram Waste & Recycling, Inc.; Docket No. 2008-02899-MSW-E" to:

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

2. Immediately upon the effective date of this Order, Mr. French shall cease to cause, suffer, allow, or permit any additional municipal solid waste to be stored, processed, or disposed of at the Site.

3. Within 30 days after the effective date of the Commission Order, Mr. French shall remove all municipal solid waste at the Site and dispose of the waste at an authorized facility, in accordance with 30 TEX. ADMIN. CODE § 330.15(c).

4. Within 45 days after the effective date of the Commission Order, Mr. French shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records to demonstrate compliance with the above ordering provisions. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The written certification and copies of documentation necessary to demonstrate compliance with the ordering provisions 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:

Mr. Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2301 Gravel Drive
Fort Worth, Texas 76118-6951

6. 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 Respondent has not complied with one or more of the terms or conditions in this Commission Order.

7. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

8. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.

9. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.

10. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

Bryan W. Shaw, Ph.D., Chairman
For the Commission