

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

November 3, 2010

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

Re: SOAH Docket No. 582-10-1474; TCEQ Docket No. 2009-0862-MSW-E; In Re:
In The Matter Of An Enforcement Action Against Downstream Environmental,
LLC

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 November 23, 2010. Any replies to exceptions or briefs must be filed in the same manner no later than December 3, 2010.

This matter has been designated **TCEQ Docket No. 2009-0862-MSW-E; SOAH Docket No. 582-10-1474**. 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,


STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SDA/Ls
Enclosures
cc: Mailing List

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SOAH DOCKET NO. 582-10-1474
TCEQ DOCKET NO. 2009-0862-MSW-E

IN THE MATTER OF AN	§	BEFORE THE STATE OFFICE
ENFORCEMENT ACTION AGAINST	§	OF
DOWNSTREAM ENVIRONMENTAL,	§	
LLC	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) alleges that Downstream Environmental, L.L.C. (Downstream or Respondent) violated TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE §§ 305.125(1), 330.7(a), 330.15(a)(1), 330.63, 330.211, and 330.27, by: (1) failing to contain and prevent unauthorized discharge of municipal solid waste (MSW) into or adjacent to water in the state; (2) engaging in the unauthorized storage of MSW; (3) failing to design unenclosed containment areas to account for precipitation from a 25-year, 24-hour storm; (4) failing to construct an enclosure for all storage and processing units containing MSW; and (5) failing to store MSW in covered or closed containers that are leak-proof, durable, and designed for safe and easy cleaning. For these violations, the ED recommends that the Commission assess an administrative penalty of \$18,360. The ED also recommends that Downstream be ordered to take certain corrective action.

Downstream contends that no MSW was discharged into water in the state, that MSW was properly stored in containment areas that are properly designed and constructed to meet all applicable regulatory requirements.

The Administrative Law Judge (ALJ) concludes that Downstream: (1) failed to contain and prevent unauthorized discharge of MSW into or adjacent to water in the state; (2) engaged in the unauthorized storage of MSW; (3) failed to design unenclosed containment areas to account for precipitation from a 25-year, 24-hour storm; (4) failed to construct an enclosure for all storage and processing units containing MSW; and (5) failed to store MSW in covered or closed

containers that are leak-proof, durable, and designed for safe and easy cleaning. The ALJ further concludes that the proposed penalty was correctly calculated in accordance with applicable law and the Commission's September 2002 Penalty Policy (Penalty Policy) and that Downstream should be assessed an administrative penalty and be required to take corrective action to come into compliance as proposed by the ED.

II. JURISDICTION

The hearing convened on September 8, 2010, before ALJ Steven D. Arnold in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. The ED was represented by attorney Jennifer Cook. The Respondent appeared through her attorney Mary Wimbish. Jurisdiction was proved as found in Order No. 1 dated January 5, 2010. The Proposed Order contains the necessary findings of fact and conclusions of law to establish jurisdiction without further discussion here.

III. THE ALLEGED VIOLATIONS

Downstream owns and operates a grease and grit trap processing facility located at 3737 Walnut Bend Lane in Houston, Harris County, Texas (Facility). The Facility is a Type V-Grease and Grit Trap MSW facility, which is authorized to store and process grease trap waste, grit trap waste, septic waste, or a combination of these wastes resulting from or incidental to municipal, community, commercial, institutional, recreational activities, and food preparation facilities located on industrial sites, all in accordance with Permit MSW-2298, issued August 14, 2003.

A. The ED's Evidence

Elijah Gandee, Environmental Investigator from the TCEQ Houston Regional Office, testified that he and fellow investigators Charlie Burner and John Shipley conducted a Case Development Investigation (CDI) at the Facility on August 29, 2008. The investigation focused on collecting soil samples around three open-air grease and grit drying beds observed in a

Follow-up Storm Water No Exposure Exclusion Investigation conducted by Courtney Wise of the TCEQ Water Section on July 30, 2008.

Mr. Gandee testified that upon entering the site, the investigators met with Mr. Daniel Noyes, President of Downstream. The investigators reviewed the allegations with Mr. Noyes, walked the Facility grounds, and collected soil grab samples in the concrete pads used to manage grease and grit trap waste.

Mr. Noyes escorted the investigators through the Facility and provided a brief summary of the Facility's operations and process paths for accepted waste. According to Mr. Noyes, the process path for grit trap and septic waste (as described in the Facility's Permit) is that waste is off-loaded in the truck receiving bays and the free water is drawn off and the remaining waste is centrifuged to further extract the liquid component. According to the Facility's Site Operating Plan (SOP), all liquids are discharged into the City of Houston's sanitary sewer in accordance with the City of Houston Industrial Waste Ordinance. The solids and sludge that comes in with the waste that is generated by the Facility is solidified, placed into roll-off boxes, and transported off-site for disposal.

Mr. Gandee testified that Downstream failed to prevent the unauthorized discharge of wastes from the concrete solidification pad located across from the heated intake tank. Several stains were observed along the wall, indicating areas where the waste had apparently overflowed and ran down the walls to the ground. Six soil samples were collected by the investigators along the western and southern perimeter of the concrete pad. All samples collected on the property were found to be contaminated by petroleum hydrocarbons at levels requiring remediation. Each soil sample contained concentrations of mercury exceeding the Texas Risk Reduction Program (TRRP) Tier 1 residential protective concentration levels (PCL). Additionally, one of the samples contained concentrations of barium, cadmium, lead, mercury, and silver exceeding TRRP Tier 1 residential PCLs.

During the investigation, it was noted that Downstream uses a concrete pad subdivided by concrete retention walls to aid in the solidification of wastes. There is no enclosure, cover, or roof of any kind over the concrete pad, and the waste is stored within is exposed to open air. The concrete pad used in the processing is a modification of the waste processing system that is not reflected in the Facility's Permit, thus it is unauthorized storage.

The investigators noticed three roll-off boxes near the Facility entrance. These roll-off boxes were uncovered and appeared to be leaking. TCEQ witness Jeff Holderread, Team Leader Municipal Solid Waste, testified that draining roll-off boxes is considered processing, which would have to be included in the SOP. Section 3.2 of the SOP specifies that all solid waste must be stored in covered or closed containers and that containers that will be mechanically handled must be designed to prevent leakage during storage.

B. Downstream's Evidence

Mr. Noyes testified that the Facility had a unique design, the purpose of which was to prevent the possibility of contaminants leaving the property. According to Mr. Noyes, although the Facility is located adjacent to a bayou, the Facility lies in a bowl-shaped area that makes it impossible for contaminants to exit the property. There also is a roadbed which creates an additional barrier preventing contaminants from leaving the property. Mr. Noyes testified that the Facility operates a closed loop system, which is designed to capture storm water and then recycle it into the processing portions of the Facility. In short, according to Mr. Noyes, the topography and the design of the Facility make it impossible for waste to leave the property.

According to Mr. Noyes, the way in which the concrete pad is laid ensures that all wastes that escape will go into the offloading area and will be processed with the rest of the waste in the Facility.

Mr. Noyes stated that Downstream had recently amended its permit for the Facility and believed that it had done all that was required to be in compliance with TCEQ regulations.

When asked about the 2007 addition of the grit basin, Mr. Noyes stated that it really was not a processing unit but, rather, it was a place to clean out the waste. The grit basin added in 2007 had basically the same design and purpose as the grit basin included in the original plans approved by TCEQ.

Finally, when asked about the roll-off boxes, Mr. Noyes testified emphatically that they were not leaking, rather they were being drained in accordance with industry standard practice. He said that the chains had been loosened to permit liquids to escape, and the small amount of liquid on the ground was vacuumed up and properly disposed of.

C. ALJ's Analysis

It seems clear to the ALJ that the violations alleged by the ED actually occurred. The Facility is located adjacent to a bayou, containing water in the state. The Facility permitted the discharge of water onto the ground in an area adjacent to water in the state. It is immaterial whether the water actually entered the water in the state or not; it is the discharge that constitutes the violation. The discharge was from a containment area that failed to meet requirements for a 25-year, 24 hour storm event. This conclusion is bolstered by Downstream's Proposed Findings of Facts and Conclusions of Law, in which Downstream conceded that after the inspection the Facility "had been altered to make the containment walls taller, thus accounting for precipitation from 25 year, 24 hour storm."¹

Similarly, Downstream was using an unenclosed concrete pad filled with MSW, which is nowhere authorized in Downstream's Site Development Plan (which only mentions the use of concrete pads for secondary containment areas). Downstream's testimony on this point amounts to little more than contentions that the unenclosed pad was so similar to what was proposed in the original plan as to make no difference. What Downstream's arguments miss, however, is that what was constructed fails to satisfy the legal criteria applicable to the Facility.

¹ Downstream's Proposed Findings of Fact and Conclusions of Law at 2.

Finally, the roll-off boxes were not covered and they leaked. There simply cannot be any other explanation, despite the protestations of Downstream to the contrary.

IV. CORRECTIVE ACTIONS

Pursuant to TEX. WATER CODE §7.073, if a person violates any statute or rule within the Commission's jurisdiction, the Commission may order the person to take corrective action. The ED recommends that Downstream be required to: (1) within 30 days from the effective date of the Commission's order: (a) comply with and operate in accordance with MSW Permit No. 2298, Site Operating Plan and Site Development Plan; (b) cease discharge and overflow from the concrete solidifying pad and construct and utilize storage and processing units containing MSW to prevent unauthorized storage and discharges; and (c) cease storing MSW in unenclosed storage areas that are not designed to account for precipitation from a 25-year, 24-hour storm and only store MSW in unenclosed storage areas that are designed to account for precipitation from a 25-year, 24-hour storm; (2) within 60 days from the effective date of the Commission's order, Downstream shall ensure MSW is contained in covered or closed containers that are leakproof, durable, and designed for safe and easy cleaning, in accordance with 30 TEX. ADMIN. CODE §330.211; (3) within 90 days from the effective date of the Commission's order, submit a written Affected Property Assessment Report along with other written certification and detailed documentation, including photographs, receipts, and other records demonstrating compliance with the required corrective action; and (4) within 105 days from the date of the Commission's order, submit written certification, and include detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with the Commission's order.

V. PENALTIES

The ED showed that the disputed administrative penalty of \$18,360 was properly calculated. TCEQ Enforcement Coordinator Danielle Porras explained the calculations, and

Downstream did not dispute her qualifications. Although Downstream complained about the calculation, the ED's calculation comported with the law and is correct.

The failure to contain and prevent the unauthorized discharge of MSW into or adjacent to water in the state and the failure to design unenclosed containment areas to account for precipitation from a 25-year, 24-hour storm were grouped and treated as a single continuing violation. It is a moderate actual violation which, according to the Penalty Policy, equates to a base penalty for each violation event of 25 percent of the maximum \$10,000 penalty, or \$2,500. There were four quarterly violations that occurred from the August 29, 2008, investigation to the June 9, 2009, screening date. Thus, the amount of the penalty was \$10,000. This was adjusted by 2 percent (\$200) due to Downstream's compliance history, resulting in a total administrative penalty for the first violation of \$10,200.

The failure to construct an enclosure for all storage and processing units containing MSW is a moderate potential violation which, according to the Penalty Policy, equates to a base penalty for each violation event of 10 percent of the maximum \$10,000 penalty, or \$1,000. There were four quarterly violations that occurred from the August 29, 2008, investigation to the June 9, 2009, screening date. Thus, the amount of the penalty was \$4,000. This was adjusted by 2 percent (\$80) due to Downstream's compliance history, resulting in a total administrative penalty for the second violation of \$4,080.

The failure to store MSW in covered or closed containers that are leak-proof, durable, and designed for safe and easy cleaning is a minor actual violation which, according to the Penalty Policy, equates to a base penalty for each violation event of 10 percent of the maximum \$10,000 penalty, or \$1,000. There were four quarterly violations that occurred from the August 29, 2008, investigation to the June 9, 2009, screening date. Thus, the amount of the penalty was \$4,000. This was adjusted by 2 percent (\$80) due to Downstream's compliance history, resulting in a total administrative penalty for the third violation of \$4,080.

The sum of all administrative penalties described above is \$18,360, which the ALJ finds to be reasonable.

VI. SUMMARY

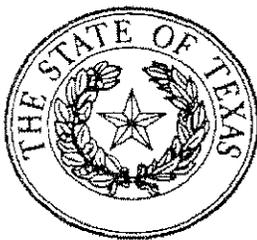
The ALJ recommends that the Commission adopt the attached proposed order, finding that Downstream committed the alleged violations and requiring Downstream: (1) to pay an administrative penalty of \$18,360; and (2) to take the corrective action necessary to bring the property into compliance.

SIGNED November 3, 2010.



STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
ASSESSING ADMINISTRATIVE PENALTIES AGAINST AND
ORDERING CORRECTIVE ACTION BY
DOWNSTREAM ENVIRONMENTAL, L.L.C.;
TCEQ DOCKET NO. 2009-0862-MSW-E
SOAH DOCKET NO. 582-10-1474**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's First Amended Preliminary Report and Petition recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Downstream Environmental, L.L.C. (Downstream). A Proposal for Decision (PFD) was presented by Steven D. Arnold, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the Petition on September 8, 2010, in Austin, Texas.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Downstream Environmental, L.L.C. (Downstream) owns property at 3737 Walnut Bend Lane in Houston, Harris County, Texas (Facility), which is adjacent to a bayou.
2. During an investigation conducted on August 29, 2008, a TCEQ investigator documented that Downstream violated violated TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE

§§ 305.125(1), 330.7(a), 330.15(a)(1), 330.63, 330.211, and 330.27, by: (1) failing to contain and prevent unauthorized discharge of municipal solid waste (MSW) into or adjacent to water in the state; (2) engaging in the unauthorized storage of MSW; (3) failing to design unenclosed containment areas to account for precipitation from a 25-year, 24-hour storm; (4) failing to construct an enclosure for all storage and processing units containing MSW; and (5) failing to store MSW in covered or closed containers that are leak-proof, durable, and designed for safe and easy cleaning.

3. On or about July 2, 2009, Downstream received notice of violation concerning the above from the Executive Director (ED) of the TCEQ.
4. On September 30, 2009, the ED filed the Executive Director's Preliminary Report and Petition (EDPRP), in accordance with TEX. WATER CODE ANN. § 7.054, alleging that Downstream violated 30 TEX. ADMIN. CODE § 330.7(a). On August 30, 2010, the ED filed a Second Amended Executive Director's Preliminary Report and Petition (Amended EDPRP).
5. In the Amended EDPRP, the ED recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$18,360 against Downstream for the alleged violations. The ED also recommended that the Commission order Downstream to take certain corrective action.
6. On October 9, 2009, Downstream filed a request for hearing concerning the EDPRP and the matter was referred to SOAH for hearing.
7. On December 8, 2009, the TCEQ Chief Clerk mailed notice of the scheduled preliminary hearing to Downstream.
8. On January 4, 2010, a joint motion was filed to: (1) waive appearance at the preliminary hearing; (2) admit into evidence ED Exhibits A through D to show jurisdiction; and (3) to approve an agreed procedural schedule.

9. In Order No. 1 issued on January 5, 2010, the ALJ ordered that ED Exhibits A through D were admitted to show jurisdiction and that the evidentiary hearing on the merits would convene on May 14, 2010. A copy of that Order was served on all parties.
10. On May 11, 2010, Order No. 2 was issued continuing the hearing on the merits. On June 22, 2010, Order No. 3 issued, ordering that the hearing on the merits would convene on September 8, 2010, and continue until concluded. Copies of those orders were served on all parties.
11. On September 8, 2010, the ALJ convened the hearing on the merits. The ED and Downstream appeared through their representatives. The Office of Public Interest Counsel did not appear or seek a continuance.
12. On August 29, 2008, the concrete solidifying pad located across from the heated inlet tank at the Facility had several stains along the wall that indicated areas where waste had overflowed and ran down the walls to the ground.
13. Samples collected from the area surrounding the concrete solidifying pad at the Facility were found to be contaminated by petroleum hydrocarbons at levels requiring remediation. The samples collected also exceeded residential protective concentration levels for mercury, barium, cadmium, lead, and silver.
14. Downstream permitted the unauthorized discharge of MSW into or adjacent to water of the state and failed to design unenclosed containment areas to account for precipitation from a 25-year, 24-hour storm.
15. Downstream's Facility has an unenclosed concrete pad filled with MSW.
16. Downstream's Site Development Plan does not permit unenclosed concrete pads to be used for the storage and processing of MSW.

17. Three roll-off boxes, which were not covered and were leaking, were on the Facility at the time of the inspection.
18. Downstream's Site Operating Plan requires storage of MSW in covered or closed containers that are leak-proof, durable, and designed for safe and easy cleaning.
19. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
20. The failure to contain and prevent the unauthorized discharge of MSW into or adjacent to water in the state and the failure to design unenclosed containment areas to account for precipitation from a 25-year, 24-hour storm should be grouped and treated as a single continuing violation. It is a moderate actual violation which, according to the Penalty Policy, equates to a base penalty for each violation event of 25 percent of the maximum \$10,000 penalty, or \$2,500.
21. There were four quarterly violations that occurred from the August 29, 2008, investigation to the June 9, 2009, screening date. Thus, the amount of the penalty should be \$10,000.
22. Because of Downstream's compliance history, there should be a 2 percent adjustment (\$200), resulting in a total administrative penalty for the first violation of \$10,200.
23. The failure to construct an enclosure for all storage and processing units containing MSW is a moderate potential violation which, according to the Penalty Policy, equates to a base penalty for each violation event of 10 percent of the maximum \$10,000 penalty, or \$1,000.
24. There were four quarterly violations that occurred from the August 29, 2008, investigation to the June 9, 2009, screening date. Thus, the amount of the penalty should be \$4,000.

25. Because of Downstream's compliance history, there should be a 2 percent adjustment (\$80), resulting in a total administrative penalty for the second violation of \$4,080.
26. The failure to store MSW in covered or closed containers that are leak-proof, durable, and designed for safe and easy cleaning is a minor actual violation which, according to the Penalty Policy, equates to a base penalty for each violation event of 10 percent of the maximum \$10,000 penalty, or \$1,000.
27. There were four quarterly violations that occurred from the August 29, 2008, investigation to the June 9, 2009, screening date. Thus, the amount of the penalty should be \$4,000.
28. Because of Downstream's compliance history, there should be a 2 percent adjustment (\$80), resulting in a total administrative penalty for the third violation of \$4,080.
29. The total administrative penalty, calculated in accordance with the Penalty Policy, is \$18,360.

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 Water Code or of the Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under TEX. WATER CODE ANN. § 7.052, a penalty may not exceed \$10,000 per violation, per day for each violation at issue in this case.
3. Additionally, the Commission may order the violator to take corrective action. TEX. WATER CODE ANN. § 7.073.

4. As required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§1.11 and 70.104, Downstream was notified of the EDPRP and of the opportunity to request a hearing on the alleged violation or the penalty or corrective action proposed therein.
5. 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(b)(3), Downstream was notified of the hearing on the alleged violation and the proposed penalty and corrective action.
6. 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.
7. Based on the above Findings of Fact and Conclusions of Law, Downstream violated TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE §§ 305.125(1), 330.7(a), 330.15(a)(1), 330.63, 330.211, and 330.27.
8. In determining the amount of an administrative penalty, TEX. WATER CODE ANN. § 7.053 requires the Commission to consider several factors, including:
 - The violation's 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.

9. Based on the above Findings of Fact, the factors set out in TEX. WATER CODE ANN. § 7.053, and the Commission's Penalty Policy, the Executive Director (ED) correctly calculated the penalty for the alleged violation and an administrative penalty of \$18,360 is justified.
10. Based on the above Findings of Fact, Downstream should be required to take the corrective action measures that the ED recommends.

III. ORDERING PROVISIONS

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

1. Downstream Environmental, L.L.C. (Downstream) is assessed an administrative penalty in the amount of \$18,360 for its violations of TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE §§ 305.125(1), 330.7(a), 330.15(a)(1), 330.63, 330.211, and 330.27. The payment of this administrative penalty and the performance of all corrective action listed herein will completely resolve the violation set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Downstream Environmental, L.L.C.; TCEQ Docket No. 2009-0862-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. Within 30 days of the effective date of this order, Downstream shall:

- a) Comply with and operate in accordance with MSW Permit No. 2298, Site Operating Plan and Site Development Plan;
 - b) Cease discharge and overflow from the concrete solidifying pad and construct and utilize storage and processing units containing MSW to prevent unauthorized storage and discharges; and
 - c) Cease storing MSW in unenclosed storage areas that are not designed to account for precipitation from a 25-year, 24-hour storm and only store MSW in unenclosed storage areas that are designed to account for precipitation from a 25-year, 24-hour storm.
3. Within 60 days after the effective date of this order, Downstream shall ensure MSW is contained in covered or closed containers that are leakproof, durable, and designed for safe and easy cleaning, in accordance with 30 TEX. ADMIN. CODE § 330.211.
 4. Within 90 days after the effective date of this order, Downstream shall submit an Affected Property Assessment Report, pursuant to 30 TEX. ADMIN. CODE §350.91, to the Executive Director for approval. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350, which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 through 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(l)); and Institutional Controls under Subchapter F. submit the report to:

Environmental Cleanup Section
Remediation Division MC 137 or 221
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. Within 105 days after the effective date of this order, Downstream shall submit written certification as described below, and include detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision

Nos. 2, 3, and 4. 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.”

6. Downstream shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

7. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Downstream if the ED determines that Downstream has not complied with one or more of the terms or conditions in this Commission Order.

8. 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.
9. 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.
10. The Commission's Chief Clerk shall forward a copy of this Order to Downstream.
11. 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