

8. The Executive Director respectfully requests that the ALJ's Proposed Order be amended to correct a minor typographical error by deleting an extra space found before the phrase "the penalties" in Conclusion of Law No. 2.
9. The Executive Director respectfully requests that the ALJ's Proposed Order be amended to correct a minor typographical error by deleting an extra space found in the citation to TEX. GOV'T. CODE § 2001.051(1) in Conclusion of Law No. 3.
10. The Executive Director respectfully requests that the ALJ's Proposed Order be amended to replace the date, April 20, 2009, with the phrase "TCEQ," and to remove the word "in" in Conclusion of Law No. 5 and Ordering Provision No. 1.
11. The Executive Director respectfully requests that the ALJ's Proposed Order be amended to replace "Nicole Bealle" with "Jason Ybarra" in Ordering Provision No. 6. Mr. Ybarra recently replaced Ms. Bealle as Waste Section Manager for the TCEQ Houston Regional Office.

PRAYER

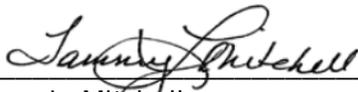
To the extent that the Administrative Law Judge's Proposal for Decision is inconsistent with these exceptions and recommended modifications, the Executive Director excepts to the Proposal for Decision. Copies of the Proposed Order with the recommended modifications are attached. Attachment "A" is the redline/strikeout version which clearly delineates the recommended modifications. Attachment "B" is a copy of the Proposed Order incorporating the Executive Director's recommended changes.

Respectfully submitted,
Texas Commission on Environmental Quality

Zak Covar
Executive Director

Caroline M. Sweeney, Deputy Director
Office of Legal Services

Kathleen C. Decker, Director
Litigation Division

by 

Tammy L. Mitchell
State Bar of Texas No. 24058003
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
(512) 239-3434 (FAX)

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2013, the original of the foregoing "Executive Director's Exceptions to the Administrative Law Judge's Proposed Order" ("Exceptions") were filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day true and correct copies of the foregoing Exceptions were sent to the following persons by the method of service indicated:

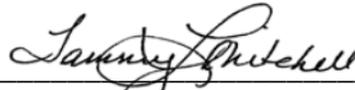
John S. Powell, Attorney
The Powell Law Firm
2405 South Grand Boulevard
Pearland, Texas 77581

Via facsimile to (281) 485-4858 and
Via First Class Mail

The Honorable Richard R. Wilfong
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Suite 502
P.O. Box 13025
Austin, Texas 78711-3025

Electronically filed

I further certify that on this day a true and correct copy of the foregoing Exceptions were electronically submitted Mr. James Murphy, Office of the Public Interest Counsel, Texas Commission on Environmental Quality, Austin, Texas.



Tammy L. Mitchell
Attorney
Litigation Division
Texas Commission on Environmental Quality

ATTACHMENT A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against
League City Paving Company, Inc.
TCEQ DOCKET NO. 2011-1756-MLM-E
SOAH DOCKET NO. 582-12-5907**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Second Amended Report and Petition (EDSARP) recommending that the Commission enter an enforcement order assessing administrative penalties against League City Paving Company, Inc. (Respondent). Richard R. Wilfong, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on January 17, 2013, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent and the Commission's Executive Director (ED). The Office of Public Interest Counsel did not participate.

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 in connection with Respondent's asphalt paving business located at 2514 Anders Lane, Kemah, Galveston County, Texas (site or facility).
2. In mid-January 2006, an environmental investigator with the Galveston County Health District conducted a complaint investigation at Respondent's facility following a large fire on the property. The investigator observed 30 to 40 barrels and other containers with unknown contents, various vehicles, propane tanks, and other miscellaneous waste throughout the site. A black, tar-like substance (asphalt emulsion) was noted to have spilled from some of the containers onto the ground. Based on these observations the

complaint was referred to the TCEQ Houston Regional Office on February 13, 2006.

3. On March 3, 2006, and May 21, 2007, a TCEQ Houston Regional Office investigator, conducted a complaint investigation and a compliance investigation of the Respondent's facility. During the investigations, the investigator documented that Respondent committed two violations of the Commission's rules involving storage and disposal of industrial solid waste (ISW), municipal solid waste (MSW), and the Texas Water Code.
4. On May 5, 2006, the ED sent Respondent a Notice of Violation informing Respondent that it had violated 30 Texas Administrative Code (TAC) §§ 330.15(c) and 335.4.
5. On July 17, 2007, the ED sent Respondent a Notice of Enforcement regarding the violations observed during the investigations of the facility conducted on March 3, 2006, and May 21, 2007.
6. On April 20⁸, 2009, an Agreed Order was approved by the Commission in Docket No. 2007-1630-MLM-E.¹
7. The Agreed Order noted that the ED alleged that Respondent committed two violations as documented during the investigation on May 21, 2007:

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(1) Respondent violated 30 TAC § 335.4(1) and Texas Water Code § 26.121(a), by failing to prevent the discharge of ~~industrial solid waste (ISW)~~ into or adjacent to waters in the state, as documented during the investigation on May 21, 2007. Specifically, asphalt emulsion originating from approximately 35 containers was observed to have discharged onto the ground and into three ponds located on the site. Soil sample analytical results indicated the presence of the following chemicals of concern (COCs) in the soil above the Texas Risk Reduction Program action levels: benzene (1.0 mg/kg), 2-hexanone (6.11 mg/kg), methylene chloride (0.1 mg/kg), lead (22.3 mg/kg), and mercury (0.12 mg/kg); and

(2) Respondent violated 30 TAC § 330.15(c), by failing to prevent the unauthorized disposal of ~~municipal solid waste (MSW)~~. Specifically, approximately 1,000 cubic yards of MSW, including dilapidated vehicles and equipment, trailers, scrap tires, and piles of miscellaneous debris.

8. Although Respondent denied the allegations described in Finding of Fact No. 7, Respondent agreed to entry of the Agreed Order to resolve the dispute.
9. The Agreed Order required Respondent to: (1) pay an administrative penalty of \$7,350.00; (2) cease accepting or disposing of any MSW; (3) cease discharging any waste onto the ground or into or adjacent to any waters in the state; (4) remove and

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¹ TCEQ Agreed Order Docket No. 2007-1630-MLM-E was approved on April 8, 2009, and was effective on April 20, 2009.

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properly dispose of all MSW within 30 days of the effective date of the Order; (5) submit an Affected Property Assessment Report (APAR) within 45 days of the effective date of the Order; and (6) submit written certification, including supporting documentation, within 60 days from the effective date of the Order to demonstrate compliance with the requirements of the Order.

10. On July 6, 2011, a TCEQ Houston Regional Office investigator conducted a site investigation to evaluate Respondent's compliance with the Agreed Order. During the investigation, the investigator documented numerous violations of the Agreed Order, including failure to remove and properly dispose of MSW, additional MSW and ISW, additional containers and spills of asphalt emulsion, containers and other miscellaneous waste partially submerged in water in a pit, failure to prepare and submit an APAR, and failure to submit documented certification of compliance with the Agreed Order. Formatted: Indent: Left: 0"
11. On September 12, 2011, the ED sent Respondent a Notice of Enforcement regarding the continuing violations noted during the investigation conducted on July 6, 2011. Formatted: Indent: Left: 0"
12. On November 28, 2011, the ED filed the Executive Director's Preliminary Report and Petition (EDPRP).
13. Respondent received the EDPRP on November 31, 2011.
14. On February 24, 2012, Respondent requested a contested case hearing on the allegations in the EDPRP.
15. On April 5, 2012, this case was referred to SOAH for a hearing.
16. On April 24, 2012, the Commission's Chief Clerk issued 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 alleged.
17. On May 24, 2012, an ALJ conducted a preliminary hearing and issued Order No. 1, which admitted exhibits to establish jurisdiction.
18. On December 19, 2012, the ED filed the Executive Director's Second Amended Report and Petition (EDSARP) alleging that Respondent violated Texas Water Code § 26.121(a) and (c); 30 TAC §§ 330.7(a), 330.15(c), 335.2, 335.4, 350.2, and 350.3; and TCEQ Agreed Order Docket No. 2007-1630-MLM-E Ordering Provisions Nos. 2.b, 2.c., and 2.d.
19. Respondent received the EDSARP on December 21, 2012.
20. The hearing on the merits was conducted on January 17, 2013, in Austin, Texas, by ALJ Richard R. Wilfong.

21. Respondent was represented at the hearing by John S. Powell attorney. The ED was represented by Tammy Mitchell, attorney in the TCEQ's Litigation Division. The Office of Public Interest Counsel did not enter an appearance. The record closed on March 22, 2013.

21.

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22. On July 6, 2011, Respondent failed to prevent the unauthorized discharge of ISW into or adjacent to water in the state. Specifically, multiple containers of waste and spills were observed throughout Respondent's site. This is an ongoing violation of the April 20, 2009 Agreed Order.

23. On July 6, 2011, Respondent failed to ~~access~~ assess the spills of a black tar-like substance known as asphalt emulsion, and submit an Affected Property Assessment Report (APAR). This is an ongoing violation of the April 20, 2009 Agreed Order.

24. On July 6, 2011, Respondent failed to prevent the unauthorized disposal of MSW. Specifically, approximately 129 cubic yards of MSW, including scrap metal, wood, plastic, and abandoned vehicles and trailers, were disposed at Respondent's facility. This is an ongoing violation of the April 20, 2009 Agreed Order.

25. Respondent violated the April 20, 2009 Agreed Order for at least 884 days.

26. The financial information produced by Respondent is incomplete, contradictory, and qualitatively and quantitatively inadequate to determine Respondent's financial condition.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the Commission's jurisdiction and enforcement authority, pursuant to Tex. Water Code §§ 7.002, 5.013, and Tex. Water Code ch. 3726.

2. As required by Tex. Water Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP, the EDSARP, and the opportunity to request a hearing on the alleged violations, the penalties, and the corrective actions proposed therein.

3. As required by Tex. Gov't. Code §§ 2001.-051(1) and 2001.052; Tex. Water Code §§ 7.056 and 7.058; 1 TAC § 155.401; and 30 TAC §§ 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.

4. 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 ch. 2003.

5. Based on the above Findings of Fact, Respondent violated Tex. Water Code § 26.121(a)

and (c); 30 TAC §§ 330.7(a), 330.15(c), 335.2, 335.4, 350.2, and 350.4; and the ~~April 20, 2009~~ TCEQ Agreed Order in Docket No. 2007-1630-MLM-E.

6. Under Tex. Water Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code within the Commission's jurisdiction or any rule, order, or permit adopted or issued thereunder.
7. Under Tex. Water Code § 7.052, a penalty may not exceed \$10,000.00 per violation, per day, for the violations at issue in this case.
8. In determining the amount of an administrative penalty, Tex. Water Code § 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. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
10. Based on consideration of the above Findings of Fact, the factors set out in Tex. Water Code § 7.053, and the Commission's Penalty Policy, the ED correctly calculated the penalties for the alleged violations, and a total administrative penalty of \$43,750.00 is justified and should be assessed against Respondent.
11. Respondent failed to establish an inability to pay the administrative penalty and has waived this claim under 30 TAC § 70.8.
12. Tex. Water Code § 7.073 authorizes the Commission to order the violator to take corrective action.
13. Based on the above Findings of Fact and Conclusions of Law, Respondent should be required to take the corrective action measures that the Executive Director recommends.

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. League City Paving Company, Inc., is assessed an administrative penalty in the amount of \$43,750.00 for violations of Tex. Water Code § 26.121(a) and (c); 30 TAC §§ 330.7(a), 330.15(c), 335.2, 335.4, 350.2, and 350.4; and the ~~April 20, 2009~~ TCEQ Agreed Order in Docket No. 2007-1630-MLM-E.
2. Within 30 days after the effective date of this Order, Respondent shall pay \$43,750.00 as an administrative penalty.
3. Immediately upon the effective date of this Order, Respondent shall: (1) cease accepting or disposing of additional MSW or ISW at Respondent's site, and (2) cease discharging any additional waste onto the ground or into or adjacent to any water in the state, in accordance with 30 TAC §§ 335.2 and 335.4 and Tex. Water Code § 26.121.
4. Within 30 days after the effective date of this Order, Respondent shall remove all MSW and ISW from Respondent's site and properly dispose of it at an authorized facility, in accordance with 30 TAC §§ 330.7(a) and 330.15(c).
5. Within 45 days after the effective date of this Order, Respondent shall conduct an affected property assessment and submit an APAR, pursuant to 30 TAC ch. 350, subchapter C, and § 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 TAC ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TAC §§ 350.92 to 350.96); financial assurance (30 TAC § 350.33(1)); and Institutional Controls under Subchapter F. The APAR shall be submitted to:

Remediation Division, MC 225
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Within 60 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions 2, 3, 4, and 5. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

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

Respondent shall submit the written certification and 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:

~~Nicole Bealle~~ Jason Ybarra, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk St., Ste. H
Houston, Texas 77023-1452

7. The payment of the administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order will 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.
8. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." The administrative penalty payment shall be sent with the notation "Re: League City Paving Company, Inc., Docket No. 2011-1756-MLM-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-30882

9. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas 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.
10. 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.
11. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Tex. Gov't. Code § 2001.144.
12. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
13. 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

ATTACHMENT B

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER Assessing Administrative Penalties Against League City Paving Company, Inc. TCEQ DOCKET NO. 2011-1756-MLM-E SOAH DOCKET NO. 582-12-5907

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Second Amended Report and Petition (EDSARP) recommending that the Commission enter an enforcement order assessing administrative penalties against League City Paving Company, Inc. (Respondent). Richard R. Wilfong, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on January 17, 2013, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent and the Commission's Executive Director (ED). The Office of Public Interest Counsel did not participate.

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 in connection with Respondent's asphalt paving business located at 2514 Anders Lane, Kemah, Galveston County, Texas (site or facility).
2. In mid-January 2006, an environmental investigator with the Galveston County Health District conducted a complaint investigation at Respondent's facility following a large fire on the property. The investigator observed 30 to 40 barrels and other containers with unknown contents, various vehicles, propane tanks, and other miscellaneous waste throughout the site. A black, tar-like substance (asphalt emulsion) was noted to have spilled from some of the containers onto the ground. Based on these observations the

complaint was referred to the TCEQ Houston Regional Office on February 13, 2006.

3. On March 3, 2006, and May 21, 2007, a TCEQ Houston Regional Office investigator, conducted a complaint investigation and a compliance investigation of the Respondent's facility. During the investigations, the investigator documented that Respondent committed two violations of the Commission's rules involving storage and disposal of industrial solid waste (ISW), municipal solid waste (MSW), and the Texas Water Code.
4. On May 5, 2006, the ED sent Respondent a Notice of Violation informing Respondent that it had violated 30 Texas Administrative Code (TAC) §§ 330.15(c) and 335.4.
5. On July 17, 2007, the ED sent Respondent a Notice of Enforcement regarding the violations observed during the investigations of the facility conducted on March 3, 2006, and May 21, 2007.
6. On April 8, 2009, an Agreed Order was approved by the Commission in Docket No. 2007-1630-MLM-E.¹
7. The Agreed Order noted that the ED alleged that Respondent committed two violations as documented during the investigation on May 21, 2007:
 - (1) Respondent violated 30 TAC § 335.4(1) and Texas Water Code § 26.121(a), by failing to prevent the discharge of ISW into or adjacent to waters in the state, as documented during the investigation on May 21, 2007. Specifically, asphalt emulsion originating from approximately 35 containers was observed to have discharged onto the ground and into three ponds located on the site. Soil sample analytical results indicated the presence of the following chemicals of concern (COCs) in the soil above the Texas Risk Reduction Program action levels: benzene (1.0 mg/kg), 2-hexanone (6.11 mg/kg), methylene chloride (0.1 mg/kg), lead (22.3 mg/kg), and mercury (0.12 mg/kg); and
 - (2) Respondent violated 30 TAC § 330.15(c), by failing to prevent the unauthorized disposal of MSW. Specifically, approximately 1,000 cubic yards of MSW, including dilapidated vehicles and equipment, trailers, scrap tires, and piles of miscellaneous debris.
8. Although Respondent denied the allegations described in Finding of Fact No. 7, Respondent agreed to entry of the Agreed Order to resolve the dispute.
9. The Agreed Order required Respondent to: (1) pay an administrative penalty of \$7,350.00; (2) cease accepting or disposing of any MSW; (3) cease discharging any waste onto the ground or into or adjacent to any waters in the state; (4) remove and properly dispose of all MSW within 30 days of the effective date of the Order; (5) submit

¹ TCEQ Agreed Order Docket No. 2007-1630-MLM-E was approved on April 8, 2009, and was effective on April 20, 2009.

an Affected Property Assessment Report (APAR) within 45 days of the effective date of the Order; and (6) submit written certification, including supporting documentation, within 60 days from the effective date of the Order to demonstrate compliance with the requirements of the Order.

10. On July 6, 2011, a TCEQ Houston Regional Office investigator conducted a site investigation to evaluate Respondent's compliance with the Agreed Order. During the investigation, the investigator documented numerous violations of the Agreed Order, including failure to remove and properly dispose of MSW, additional MSW and ISW, additional containers and spills of asphalt emulsion, containers and other miscellaneous waste partially submerged in water in a pit, failure to prepare and submit an APAR, and failure to submit documented certification of compliance with the Agreed Order.
11. On September 12, 2011, the ED sent Respondent a Notice of Enforcement regarding the continuing violations noted during the investigation conducted on July 6, 2011.
12. On November 28, 2011, the ED filed the Executive Director's Preliminary Report and Petition (EDPRP).
13. Respondent received the EDPRP on November 31, 2011.
14. On February 24, 2012, Respondent requested a contested case hearing on the allegations in the EDPRP.
15. On April 5, 2012, this case was referred to SOAH for a hearing.
16. On April 24, 2012, the Commission's Chief Clerk issued 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 alleged.
17. On May 24, 2012, an ALJ conducted a preliminary hearing and issued Order No. 1, which admitted exhibits to establish jurisdiction.
18. On December 19, 2012, the ED filed the Executive Director's Second Amended Report and Petition (EDSARP) alleging that Respondent violated Texas Water Code § 26.121(a) and (c); 30 TAC §§ 330.7(a), 330.15(c), 335.2, 335.4, 350.2, and 350.3; and TCEQ Agreed Order Docket No. 2007-1630-MLM-E Ordering Provisions Nos. 2.b, 2.c., and 2.d.
19. Respondent received the EDSARP on December 21, 2012.
20. The hearing on the merits was conducted on January 17, 2013, in Austin, Texas, by ALJ Richard R. Wilfong.
21. Respondent was represented at the hearing by John S. Powell attorney. The ED was

represented by Tammy Mitchell, attorney in the TCEQ's Litigation Division. The Office of Public Interest Counsel did not enter an appearance. The record closed on March 22, 2013.

22. On July 6, 2011, Respondent failed to prevent the unauthorized discharge of ISW into or adjacent to water in the state. Specifically, multiple containers of waste and spills were observed throughout Respondent's site. This is an ongoing violation of the April 20, 2009 Agreed Order.
23. On July 6, 2011, Respondent failed to assess the spills of a black tar-like substance known as asphalt emulsion, and submit an Affected Property Assessment Report (APAR). This is an ongoing violation of the April 20, 2009 Agreed Order.
24. On July 6, 2011, Respondent failed to prevent the unauthorized disposal of MSW. Specifically, approximately 129 cubic yards of MSW, including scrap metal, wood, plastic, and abandoned vehicles and trailers, were disposed at Respondent's facility. This is an ongoing violation of the April 20, 2009 Agreed Order.
25. Respondent violated the April 20, 2009 Agreed Order for at least 884 days.
26. The financial information produced by Respondent is incomplete, contradictory, and qualitatively and quantitatively inadequate to determine Respondent's financial condition.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the Commission's jurisdiction and enforcement authority, pursuant to Tex. Water Code §§ 7.002, 5.013, and Tex. Water Code ch. 26.
2. As required by Tex. Water Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP, the EDSARP, and the opportunity to request a hearing on the alleged violations, the penalties, and the corrective actions proposed therein.
3. As required by Tex. Gov't. Code §§ 2001.051(1) and 2001.052; Tex. Water Code §§ 7.056 and 7.058; 1 TAC § 155.401; and 30 TAC §§ 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.
4. 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 ch. 2003.
5. Based on the above Findings of Fact, Respondent violated Tex. Water Code § 26.121(a) and (c); 30 TAC §§ 330.7(a), 330.15(c), 335.2, 335.4, 350.2, and 350.4; and TCEQ

Agreed Order Docket No. 2007-1630-MLM-E.

6. Under Tex. Water Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code within the Commission's jurisdiction or any rule, order, or permit adopted or issued thereunder.
7. Under Tex. Water Code § 7.052, a penalty may not exceed \$10,000.00 per violation, per day, for the violations at issue in this case.
8. In determining the amount of an administrative penalty, Tex. Water Code § 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. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
10. Based on consideration of the above Findings of Fact, the factors set out in Tex. Water Code § 7.053, and the Commission's Penalty Policy, the ED correctly calculated the penalties for the alleged violations, and a total administrative penalty of \$43,750.00 is justified and should be assessed against Respondent.
11. Respondent failed to establish an inability to pay the administrative penalty and has waived this claim under 30 TAC § 70.8.
12. Tex. Water Code § 7.073 authorizes the Commission to order the violator to take corrective action.
13. Based on the above Findings of Fact and Conclusions of Law, Respondent should be required to take the corrective action measures that the Executive Director recommends.

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. League City Paving Company, Inc., is assessed an administrative penalty in the amount of \$43,750.00 for violations of Tex. Water Code § 26.121(a) and (c); 30 TAC §§ 330.7(a), 330.15(c), 335.2, 335.4, 350.2, and 350.4; and TCEQ Agreed Order Docket No. 2007-1630-MLM-E.
2. Within 30 days after the effective date of this Order, Respondent shall pay \$43,750.00 as an administrative penalty.
3. Immediately upon the effective date of this Order, Respondent shall: (1) cease accepting or disposing of additional MSW or ISW at Respondent's site, and (2) cease discharging any additional waste onto the ground or into or adjacent to any water in the state, in accordance with 30 TAC §§ 335.2 and 335.4 and Tex. Water Code § 26.121.
4. Within 30 days after the effective date of this Order, Respondent shall remove all MSW and ISW from Respondent's site and properly dispose of it at an authorized facility, in accordance with 30 TAC §§ 330.7(a) and 330.15(c).
5. Within 45 days after the effective date of this Order, Respondent shall conduct an affected property assessment and submit an APAR, pursuant to 30 TAC ch. 350, subchapter C, and § 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 TAC ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TAC §§ 350.92 to 350.96); financial assurance (30 TAC § 350.33(1)); and Institutional Controls under Subchapter F. The APAR shall be submitted to:

Remediation Division, MC 225
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Within 60 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions 2, 3, 4, and 5. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

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

Respondent shall submit the written certification and 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:

Jason Ybarra, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk St., Ste. H
Houston, Texas 77023-1452

7. The payment of the administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order will 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.
8. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." The administrative penalty payment shall be sent with the notation "Re: League City Paving Company, Inc., Docket No. 2011-1756-MLM-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-30882

9. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas 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.
10. 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.
11. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Tex. Gov't. Code § 2001.144.
12. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
13. 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**