

Executive Summary – Enforcement Matter – Case No. 59754
City of Port Arthur
RN100225390
Docket No. 2020-1152-MSW-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MSW

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Port Arthur Landfill, 4732 Highway 73, Port Arthur, Jefferson County

Type of Operation:

Type I landfill

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: August 20, 2021

Comments Received: No

Penalty Information

Total Penalty Assessed: \$13,500

Amount Deferred for Expedited Settlement: \$2,700

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project (“SEP”) Conditional Offset: \$10,800

Name of SEP: Texas Water Development Board (Third-Party Pre-Approved)

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): August 7, 2019

Complaint Information: Alleged the landfill's run-off was impacting Taylor Bayou.

Date(s) of Investigation: August 14, 2019 and August 4, 2020

Date(s) of NOE(s): August 21, 2020

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City of Port Arthur
RN100225390
Docket No. 2020-1152-MSW-E

Violation Information

1. Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste. Specifically, runoff sediment was observed in a nearby tributary adjacent to the Facility and on the property adjacent to the west of the active face of the landfill [30 TEX. ADMIN. CODE § 330.15(a) and (c), and TEX. WATER CODE § 26.121(a)(1)].
2. Failed to design, construct, and maintain a run-on control and a run-off management system capable of preventing flow onto or from the active portions of the landfill. Specifically, a run-on control and run-off management system was not in place in the active portions of the landfill [30 TEX. ADMIN. CODE § 330.305(b) and (c)].
3. Failed to provide dikes, embankments, drainage structures, or diversion channels sized and graded to handle the design runoff, and to grade the slopes of the sides and toe in such a manner as to minimize the potential for erosion. Specifically, no dikes, embankments, drainage structures, or diversion channels to control runoff from the landfill were observed; all side slopes of the landfill were not graded in a manner that would minimize the potential for erosion; and significant runoff from erosion at the active face of the landfill and the access road was observed [30 TEX. ADMIN. CODE § 330.305(e)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. The Order will require the Respondent to implement and complete a SEP (see SEP Attachment A).
2. The Order will also require the Respondent to:
 - a. Immediately, cease disposing any additional municipal solid waste from the Facility into or adjacent to any water in the state.
 - b. Within 30 days:
 - i. Implement a run-on control and a run-off management system capable of preventing flow onto or from the active portions of the Facility;

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- ii. Build and/or restore any dikes, embankments, drainage structures, and/or diversion channels to guarantee proper run-off control, repair all side slopes to minimize the potential for erosion, and cease any existing run-off on the active face of the landfill and access roads; and
 - iii. Clean up and properly remove any runoff sediment affecting, or that could potentially affect, the tributary adjacent to the Facility and the property adjacent to the west of the active face of the landfill.
- c. Within 45 days, submit written certification to demonstrate compliance with a. and b.

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Berenice Munoz, Enforcement Division, Enforcement Team 6, MC R-06, (915) 834-4976; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

SEP Third-Party Administrator: Texas Water Development Board, P.O. Box 13231 Austin, Texas 78711-3231

Respondent: The Honorable Thurman Bill Bartie, Mayor, City of Port Arthur, P.O. Box 1089, Port Arthur, Texas 77641

Ronald Burton, City Manager, City of Port Arthur, P.O. Box 1089, Port Arthur, Texas 77641

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	24-Aug-2020	Screening	29-Aug-2020	EPA Due	
	PCW	29-Aug-2020				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Port Arthur
Reg. Ent. Ref. No.	RN100225390
Facility/Site Region	10-Beaumont
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	59754	No. of Violations	2
Docket No.	2020-1152-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Berenice Munoz
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$11,250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	20.0%	Adjustment	Subtotals 2, 3, & 7	\$2,250
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Notes	Enhancement for one Agreed Order containing a denial of liability.
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$3,400	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$21,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$13,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$13,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$13,500
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DEFERRAL	20.0%	Reduction	Adjustment	-\$2,700
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral offered for expedited settlement.
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PAYABLE PENALTY	\$10,800
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Screening Date 29-Aug-2020

Docket No. 2020-1152-MSW-E

PCW

Respondent City of Port Arthur

Policy Revision 4 (April 2014)

Case ID No. 59754

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN100225390

Media Municipal Solid Waste

Enf. Coordinator Berenice Munoz

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one Agreed Order containing a denial of liability.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 20%

Screening Date 29-Aug-2020
Respondent City of Port Arthur
Case ID No. 59754
Reg. Ent. Reference No. RN100225390
Media Municipal Solid Waste
Enf. Coordinator Berenice Munoz

Docket No. 2020-1152-MSW-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number 1

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

Violation Description
 Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste ("MSW"). Specifically, runoff sediment was observed in a nearby tributary adjacent to the Facility and on the property adjacent to the west of the active face of the landfill.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			X	15.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

Matrix Notes
 Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 25 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the August 4, 2020 follow-up investigation date to the August 29, 2020 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$117

Violation Final Penalty Total \$4,500

This violation Final Assessed Penalty (adjusted for limits) \$4,500

Economic Benefit Worksheet

Respondent City of Port Arthur
Case ID No. 59754
Reg. Ent. Reference No. RN100225390
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	14-Aug-2019	17-Dec-2021	2.35	\$117	n/a	\$117

Notes for DELAYED costs

Estimated delayed cost to clean up and properly remove any runoff sediment affecting, or that could potentially affect, the tributary adjacent to the Facility and the property adjacent to the west of the active face of the landfill (\$1,000). The Date Required is the initial investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$117

Screening Date 29-Aug-2020
Respondent City of Port Arthur
Case ID No. 59754
Reg. Ent. Reference No. RN100225390
Media Municipal Solid Waste
Enf. Coordinator Berenice Munoz

Docket No. 2020-1152-MSW-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number

Rule Cite(s)

Violation Description

Failed to design, construct, and maintain a run-on control and a run-off management system capable of preventing flow onto or from the active portions of the landfill. Specifically, a run-on control and run-off management system was not in place in the active portions of the landfill. Also, failed to provide dikes, embankments, drainage structures, or diversion channels sized and graded to handle the design runoff, and to grade the slopes of the sides and toe in such a manner as to minimize the potential for erosion. Specifically, no dikes, embankments, drainage structures, or diversion channels to control runoff from the landfill were observed; all side slopes of the landfill were not graded in a manner that would minimize the potential for erosion; and significant runoff from erosion at the active face of the landfill and the access road was observed.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="30.0%"/>
Potential	<input type="text" value="X"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text" value="X"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="X"/>	<input type="text"/>

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent City of Port Arthur
Case ID No. 59754
Reg. Ent. Reference No. RN100225390
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction	\$20,000	14-Aug-2019	17-Dec-2021	2.35	\$156	\$3,127	\$3,283
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated delayed cost to implement a run-on control and a run-off management system capable of preventing flow onto or from the active portions of the Facility (\$5,000), and to build and/or restore any dikes, embankments, drainage structures, and/or diversion channels to guarantee proper run-off control, repair all side slopes to minimize the potential for erosion, and cease any existing run-off on the active face of the landfill and access roads (\$15,000). The Date Required is the initial investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$20,000

TOTAL

\$3,283

The TCEQ is committed to accessibility.

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



Compliance History Report

Compliance History Report for CN600132021, RN100225390, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN600132021, City of Port Arthur **Classification:** SATISFACTORY **Rating:** 11.57
Regulated Entity: RN100225390, City of Port Arthur Landfill **Classification:** SATISFACTORY **Rating:** 28.92
Complexity Points: 12 **Repeat Violator:** NO
CH Group: 07 - Solid Waste Landfills
Location: 4732 Highway 73, Port Arthur, Jefferson County, Texas 77642-2225
TCEQ Region: REGION 10 - BEAUMONT

ID Number(s):

AIR OPERATING PERMITS ACCOUNT NUMBER JE0198P **AIR OPERATING PERMITS** PERMIT 1546
MUNICIPAL SOLID WASTE DISPOSAL PERMIT 1815A **AIR NEW SOURCE PERMITS** AFS NUM 4824500711
AIR NEW SOURCE PERMITS ACCOUNT NUMBER JE0198P **AIR NEW SOURCE PERMITS** REGISTRATION 81990
PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 73468 **STORMWATER** PERMIT TXR05AY09
AIR EMISSIONS INVENTORY ACCOUNT NUMBER JE0198P

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: November 09, 2020

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: November 09, 2015 to November 09, 2020

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

Name: Berenice Munoz

Phone: (915) 834-4976

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

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

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

- 1 Effective Date: 07/06/2020 ADMINORDER 2019-0375-MSW-E (1660 Order-Agreed Order With Denial)
Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter D 330.129
Rqmt Prov: Section 6.1 Fire Prevention PERMIT
Description: Failed to maintain a source of earthen material in such a manner that it is available at all times to extinguish any fires.
Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter D 330.139(1)
30 TAC Chapter 330, SubChapter D 330.139(2)
Rqmt Prov: Section 4.5 Control of Windblown Wastes PERMIT
Description: Failed to control windblown waste and litter at the active working face.
Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter D 330.153
Rqmt Prov: SOP 4.11 Maintenance of Site Access Roa PERMIT
Description: Failed to maintain all-weather access roads and other access roadways in a clean and safe condition.
Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter D 330.165(a)
30 TAC Chapter 330, SubChapter D 330.165(c)

30 TAC Chapter 330, SubChapter D 330.165(d)
 Rqmt Prov: SOP 4.17.2 and 4.17.3 PERMIT
 Description: Failed to provide adequate landfill cover.
 Classification: Moderate
 Citation: 30 TAC Chapter 330, SubChapter D 330.143
 Rqmt Prov: SOP 4.7 PERMIT
 Description: Failed to install and maintain required landfill markers and a permanent benchmark.
 Classification: Moderate
 Citation: 30 TAC Chapter 330, SubChapter D 330.165(g)
 Rqmt Prov: SOP 4.17.5 PERMIT
 Description: Failed to repair erosion of intermediate cover within five days of detection.
 Classification: Moderate
 Citation: 30 TAC Chapter 330, SubChapter D 330.167
 Rqmt Prov: SOP 4.18 PERMIT
 Description: Failed to prevent the ponding of water at the Facility.
 Classification: Moderate
 Citation: 30 TAC Chapter 330, SubChapter D 330.121(a)
 30 TAC Chapter 330, SubChapter D 330.133(a)
 Rqmt Prov: SOP 4.2 PERMIT
 Description: Failed to unload solid waste into as small an area as practical as specified in the SOP.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	February 24, 2016	(1306833)
Item 2	July 20, 2016	(1345328)
Item 3	August 17, 2016	(1329033)
Item 5	July 19, 2017	(1423890)
Item 7	July 17, 2018	(1500357)
Item 10	August 14, 2019	(1583039)
Item 11	July 17, 2020	(1663860)
Item 12	August 25, 2020	(1650600)
Item 13	September 22, 2020	(1676880)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

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

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF PORT ARTHUR
RN100225390**

**§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2020-1152-MSW-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Port Arthur (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a Type I landfill located at 4732 Highway 73 in Port Arthur, Jefferson County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5). The Facility involves or involved the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361, TEX. WATER CODE ch. 26, and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$13,500 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The amount of \$2,700 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions of this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms and conditions contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.

Pursuant to TEX. WATER CODE § 7.067, \$10,800 of the penalty shall be conditionally offset by the Respondent's timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the attached SEP Agreement ("Attachment A", incorporated herein by reference). The Respondent's obligation to pay the

conditionally offset portion of the penalty shall be discharged upon full compliance with all the terms and conditions of this Order, which includes the timely and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director.

5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

II. ALLEGATIONS

During investigations conducted on August 14, 2019 and August 4, 2020, an investigator documented that the Respondent:

1. Caused, suffered, allowed, or permitted the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(a) and (c), and TEX. WATER CODE § 26.121(a)(1). Specifically, runoff sediment was observed in a nearby tributary adjacent to the Facility and on the property adjacent to the west of the active face of the landfill.
2. Failed to design, construct, and maintain a run-on control and a run-off management system capable of preventing flow onto or from the active portions of the landfill, in violation of 30 TEX. ADMIN. CODE § 330.305(b) and (c). Specifically, a run-on control and run-off management system was not in place in the active portions of the landfill.
3. Failed to provide dikes, embankments, drainage structures, or diversion channels sized and graded to handle the design runoff, and to grade the slopes of the sides and toe in such a manner as to minimize the potential for erosion, in violation of 30 TEX. ADMIN. CODE § 330.305(e). Specifically, no dikes, embankments, drainage structures, or diversion channels to control runoff from the landfill were observed; all side slopes of the landfill were not graded in a manner that would minimize the potential for erosion; and significant runoff from erosion at the active face of the landfill and the access road was observed.

III. DENIALS

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

IV. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Port Arthur, Docket No. 2020-1152-MSW-E" to:

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

2. The Respondent shall implement and complete an SEP as set forth in Section I, Paragraph No. 4. The amount of \$10,800 of the assessed penalty is conditionally offset based on the Respondent's implementation and completion of the SEP pursuant to the terms of the SEP Agreement, as defined in Attachment A. Penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment.
3. The Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, cease disposing any additional MSW from the Facility into or adjacent to any water in the state.
 - b. Within 30 days after the effective date of this Order:
 - i. Implement a run-on control and a run-off management system capable of preventing flow onto or from the active portions of the Facility, in accordance with 30 TEX. ADMIN. CODE § 330.305;
 - ii. Build and/or restore any dikes, embankments, drainage structures, and/or diversion channels to guarantee proper run-off control, repair all side slopes to minimize the potential for erosion, and cease any existing run-off on the active face of the landfill and access roads, in accordance with 30 TEX. ADMIN. CODE § 330.305; and
 - iii. Clean up and properly remove any runoff sediment affecting, or that could potentially affect, the tributary adjacent to the Facility and the property adjacent to the west of the active face of the landfill.

- c. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a and 3.b. The certification shall be signed by the Respondent 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1830

4. All relief not expressly granted in this Order is denied.
5. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If the Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination

of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.


8. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
10. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

12/01/2021

Date

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

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

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

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

Signature

Date



Ronald Burton

7-13-2021

Name (Printed or typed)
Authorized Representative of
City of Port Arthur

City Manager

Title

If mailing address has changed, please check this box and provide the new address below:

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

Attachment A
Docket Number: 2020-1152-MSW-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Port Arthur
Payable Penalty Amount:	\$10,800
SEP Offset Amount:	\$10,800
Type of SEP:	Contribution to a Third-Party Pre-Approved SEP
Third-Party Administrator:	Texas Water Development Board
Project Name:	<i>Water-Level Recorder Data in Every Texas County</i>
Location of SEP:	Statewide, with Preference for Jefferson County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

a. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Texas Water Development Board** for the *Water-Level Recorder Data in Every Texas County* project. The contribution will be used in accordance with the SEP between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to purchase, install, and maintain automatic water-level recorders in unused wells in the remaining one hundred sixty-six (166) counties. The Third-Party Administrator shall give preference to installing water-level recorders initially in counties in which there are 1) no existing automatic water-level recorder wells, 2) no groundwater conservation district, or 3) groundwater conservation districts that do not have the staff and/or the financial ability to install an automatic water-level recorder. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely for the direct cost of implementing the Project, including, but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director (“ED”), be applied to another pre-approved SEP.

The Respondent's signature affixed to this Agreed Order certifies that the Respondent has no prior commitment to make this contribution and that it is being contributed solely to settle this enforcement action. The Respondent shall not profit from this SEP.

b. Environmental Benefit

The groundwater stored within Texas' minor and major aquifers is an important natural resource that is relied upon to meet the water supply demands of Texans across the state. Many factors affect the availability of this resource including drought and increased demand. This Project will provide statewide comprehensive real-time groundwater level data to Texas counties, cities, groundwater conservation districts, water supply companies, and individual well owners. The availability of this comprehensive data will promote awareness of the effects of drought on Texas' aquifers and assist in groundwater management planning and use throughout the state.

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **Texas Water Development Board SEP** and shall mail the contribution with a copy of the Agreed Order to:

Texas Water Development Board
Attention: Manager
Groundwater Monitoring Section
P.O. Box 13231
Austin, Texas 78711-3231

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the Enforcement SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

City of Port Arthur
Agreed Order - Attachment A

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP and/or project, made by or on behalf of the Respondent must include a clear statement that **the project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

6. Recognition

The Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.