

Gerald Holmes

RN111112348

Docket No. 2021-0870-MLM-E

**Order Type:**  
Default Order

**Media:**  
MLM: AIR and MSW

**Small Business:**  
N/A

**Location Where Violations Occurred:**  
112 South 1st Street, Nederland, Jefferson County (the “Site”)

**Type of Operation:**  
unauthorized municipal solid waste disposal site

**Other Significant Matters:**  
 Additional Pending Enforcement Actions: None  
 Past-Due Penalties: None  
 Past-Due Fees: None  
 Other: None  
 Interested Third Parties: None

**Texas Register Publication Date:** March 17, 2023

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$7,500

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$7,500

**Compliance History Classifications:**

Person/CN – Satisfactory  
 Site/RN – Satisfactory

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** January 28, 2021

**Investigation Information**

**Complaint Date:** May 26, 2021

Complaint Information: Complainant alleged that a homeowner in the area is cleaning shrimp and dumping hulls on property.

**Date of Investigation:** May 27, 2021

**Date of NOV:** N/A

**Date of NOE:** June 16, 2021

Gerald Holmes  
RN111112348  
Docket No. 2021-0870-MLM-E

**Violation Information**

1. Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste (“MSW”) in such a manner to cause the creation and maintenance of a nuisance [30 TEX. ADMIN. CODE § 330.15(a)(2) and (c)].
2. Failed to prevent nuisance odor conditions [TEX. HEALTH & SAFETY CODE § 382.085(a) and (b) and 30 TEX. ADMIN. CODE § 101.4].

**Corrective Actions/Technical Requirements**

**Corrective Action Completed:**

Respondent removed all MSW from the Site and disposed of it at an authorized facility as of February 9, 2022.

**Technical Requirements:**

1. Immediately cease disposal of any additional MSW at the Site.
2. Within 30 days implement measures and/or procedures designed to prevent odors from the Site causing nuisance odor conditions that impact off-site receptors.
3. Within 45 days submit written certification to demonstrate compliance with Technical Requirement Nos. 1 and 2.

**Litigation Information**

**Date Petitions Filed:** December 13, 2022  
**Dates of Service:** December 17, 2022  
**Date Answer Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** Cynthia Sirois, Litigation Division, (512) 239-3400  
Sheldon Wayne, Public Interest Counsel, (512) 239-3144  
**TCEQ Litigation Agenda Coordinator:** Katherine McKenzie, Litigation Division, (512) 239-2575  
**TCEQ Enforcement Coordinator:** Karolyn Kent, Enforcement Division, (512) 239-2536  
**TCEQ Regional Contact:** Charlie Adams, Beaumont Regional Office, (409) 898-3838  
**Respondent Contact:** Gerald Holmes, 112 South 1st Street, Nederland, Texas 77627-2202  
**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	21-Jun-2021	<b>Screening</b>	1-Jul-2021	<b>EPA Due</b>	
	<b>PCW</b>	20-Jan-2023				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Gerald Holmes
<b>Reg. Ent. Ref. No.</b>	RN111112348
<b>Facility/Site Region</b>	10-Beaumont
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	60994	<b>No. of Violations</b>	2
<b>Docket No.</b>	2021-0870-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Air	<b>Enf. Coordinator</b>	Karolyn Kent
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$7,500</b>
---	-------------------	----------------

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	<b>0.0%</b> Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$0</b>
---------------------------	------------------------	--------------------------------	------------

Notes: No adjustment for Compliance History.

<b>Culpability</b>	No	<b>0.0%</b> Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
--------------------	----	-------------------------	-------------------	------------

Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
--	-------------------	------------

<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
-------------------------	--------------------------	-------------------	------------

Total EB Amounts: \$48  
 Estimated Cost of Compliance: \$1,036  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$7,500</b>
-----------------------------	-----------------------	----------------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0.0%</b> Adjustment	<b>\$0</b>
---	------------------------	------------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$7,500</b>
-----------------------------	----------------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$7,500</b>
-----------------------------------	-------------------------------	----------------

<b>DEFERRAL</b>	<b>0.0%</b> Reduction Adjustment	<b>\$0</b>
-----------------	----------------------------------	------------

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$7,500</b>
------------------------	----------------

**Screening Date** 1-Jul-2021

**Docket No.** 2021-0870-MLM-E

**PCW**

**Respondent** Gerald Holmes

*Policy Revision 5 (January 28, 2021)*

**Case ID No.** 60994

*PCW Revision February 11, 2021*

**Reg. Ent. Reference No.** RN111112348

**Media** Municipal Solid Waste

**Enf. Coordinator** Karolyn Kent

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

**Adjustment Percentage (Subtotal 2)** 0%

**>> Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

Satisfactory Performer

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes**

No adjustment for Compliance History.

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

**>> Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 0%

**Screening Date** 1-Jul-2021  
**Respondent** Gerald Holmes  
**Case ID No.** 60994

**Docket No.** 2021-0870-MLM-E

**PCW**

*Policy Revision 5 (January 28, 2021)*

*PCW Revision February 11, 2021*

**Reg. Ent. Reference No.** RN111112348  
**Media** Municipal Solid Waste  
**Enf. Coordinator** Karolyn Kent

**Violation Number** 1

**Rule Cite(s)**

30 Tex. Admin. Code § 330.15(a)(2) and (c)

**Violation Description**

Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste ("MSW") in such a manner to cause the creation and maintenance of a nuisance. Specifically, approximately one cubic yard of odorous shrimp waste in addition to five five-gallon buckets and two kitchen pots filled with stagnant water and one small container of stagnant, red-colored liquid observed to be attracting vectors were disposed of at the Site.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

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

**>> Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					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 35 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 May 27, 2021 investigation date to the July 1, 2021 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** \$3

**Violation Final Penalty Total** \$3,750

**This violation Final Assessed Penalty (adjusted for limits)** \$3,750

# Economic Benefit Worksheet

**Respondent** Gerald Holmes  
**Case ID No.** 60994  
**Reg. Ent. Reference No.** RN111112348  
**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
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

### 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	\$26	21-Oct-2020	9-Feb-2022	1.30	\$2	n/a	\$2
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10	21-Oct-2020	9-Feb-2022	1.30	\$1	n/a	\$1

**Notes for DELAYED costs** Estimated delayed cost to remove all MSW (\$26) from the Site and dispose of it at an authorized facility and estimated delayed cost to dispose of the stagnant water and stagnant red-colored liquid properly (\$10). The Dates Required are the initial investigation date, and the Final Dates are the 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 \$36

**TOTAL** \$3

**Screening Date** 1-Jul-2021 **Docket No.** 2021-0870-MLM-E **PCW**  
**Respondent** Gerald Holmes *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 60994 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN111112348  
**Media** Municipal Solid Waste  
**Enf. Coordinator** Karolyn Kent

**Violation Number** 2  
**Rule Cite(s)** 30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(a) and (b)  
**Violation Description** Failed to prevent nuisance odor conditions. Specifically, TCEQ staff conducted odor surveys at off-site locations equal distance to the complainants' sites on May 27, 2021, and detected very strong and highly offensive putrefying animal and fish odors that resulted in documentation of nuisance odor conditions.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

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 as a result of the violation.

**Adjustment** \$21,250

\$3,750

**Violation Events**

Number of Violation Events 1 1 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$3,750

One single event is recommended.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDRP/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** \$45 **Violation Final Penalty Total** \$3,750

**This violation Final Assessed Penalty (adjusted for limits)** \$3,750

# Economic Benefit Worksheet

**Respondent** Gerald Holmes  
**Case ID No.** 60994  
**Reg. Ent. Reference No.** RN111112348  
**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
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

### 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	27-May-2021	17-Apr-2022	0.89	\$45	n/a	\$45

**Notes for DELAYED costs**

Estimated delayed cost to implement measures and/or procedures designed to minimize odors from the Site from causing nuisance odor conditions that impact off-site receptors. The Date Required is the date an odor was detected, 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**

\$45



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 CN605819606, RN111112348, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

**Customer, Respondent, or Owner/Operator:** CN605819606, Gerald Holmes **Classification:** SATISFACTORY **Rating:** 20.00

**Regulated Entity:** RN111112348, 112 South 1st Street **Classification:** SATISFACTORY **Rating:** 20.00

**Complexity Points:** 0 **Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 112 South 1<sup>st</sup> Street, Nederland, Jefferson County, Texas 77627-2202

**TCEQ Region:** REGION 10 - BEAUMONT

**ID Number(s):**

**MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER**  
10111112348

**Compliance History Period:** September 01, 2016 to August 31, 2021 **Rating Year:** 2021 **Rating Date:** 09/01/2021

**Date Compliance History Report Prepared:** August 16, 2022

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** December 08, 2016 to December 08, 2021

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

**Name:** Hailey Johnson

**Phone:** (512) 239-1756

**Site and Owner/Operator History:**

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

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

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

N/A

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

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

**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  
GERALD HOLMES;  
RN111112348**

**§  
§  
§  
§  
§**

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2021-0870-MLM-E**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition, filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Gerald Holmes (“Respondent”).

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Respondent owns an unauthorized municipal solid waste (“MSW”) disposal site located at 112 South 1st Street in Nederland, Jefferson County, Texas (the “Site”). The Site involves or involved the management of MSW, as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Site also consists or consisted of one or more sources, as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on May 27, 2021, an investigator documented that Respondent:
  - a. Caused, suffered, allowed, or permitted the unauthorized disposal of MSW in such a manner to cause the creation and maintenance of a nuisance. Specifically, approximately one cubic yard of odorous shrimp waste in addition to five five-gallon buckets and two kitchen pots filled with stagnant water and one small container of stagnant, red-colored liquid observed to be attracting vectors were disposed of at the Site; and
  - b. Failed to prevent nuisance odor conditions. Specifically, TCEQ staff conducted odor surveys at off-site locations equal distance to the complainants’ sites on May 27, 2021 and detected very strong and highly offensive putrefying animal and fish odors that resulted in documentation of nuisance odor conditions.
3. The Executive Director recognizes that Respondent removed all MSW from the Site and disposed of it at an authorized facility as of February 9, 2022.
4. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Gerald Holmes” (the “EDPRP”) in the TCEQ Chief Clerk’s office on December 13, 2022.
5. By letter dated December 13, 2022, sent to Respondent’s last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to USPS.com “Track & Confirm” delivery confirmation records, Respondent received notice of the EDPRP on December 17, 2022.

6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE chs. 361 and 382 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent caused, suffered, allowed, or permitted the unauthorized disposal of MSW in such a manner to cause the creation and maintenance of a nuisance, in violation of 30 TEX. ADMIN. CODE § 330.15(a)(2) and (c).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to prevent nuisance odor conditions, in violation of TEX. HEALTH & SAFETY CODE § 382.085(a) and (b) and 30 TEX. ADMIN. CODE § 101.4.
4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
5. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of seven thousand five hundred dollars (\$7,500.00) is justified by the facts recited in this Order and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

#### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of seven thousand five hundred dollars (\$7,500.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only 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 violations which are not raised here.
2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: Gerald Holmes; Docket No. 2021-0870-MLM-E" to:

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

3. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, cease disposal of any additional MSW at the Site.
  - b. Within 30 days after the effective date of this Order, implement measures and/or procedures designed to prevent odors from the Site causing nuisance odor conditions that impact off-site receptors.
  - c. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.b. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by 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 fine and imprisonment for knowing violations.”

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

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

and:

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 provisions of this Order shall apply to and be binding upon Respondent.
6. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until 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 Enforcement Division at the address listed above.
7. If 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. 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.
10. 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.
11. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV’T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

---

For the Commission

---

Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



UNSWORN DECLARATION OF CYNTHIA K. SIROIS

"On behalf of the Executive Director of the Texas Commission on Environmental Quality, the 'Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Gerald Holmes' (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 13, 2022.

The EDPRP was mailed to Respondent's last known address on December 13, 2022, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent received notice of the EDPRP on December 17, 2022.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

"My name is Cynthia K. Sirois, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Travis County,  
State of Texas,  
on the 28th day of February, 2023

*Cynthia K Sirois*

\_\_\_\_\_  
Declarant