

*Wm. Line*

Kathleen Hartnett White, *Chairman*  
Larry R. Soward, *Commissioner*  
H. S. Buddy Garcia, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 28, 2007

### CERTIFIED MAIL

Jose M. Flores, County Commissioner  
The Honorable J. D. Salinas, III  
Hidalgo County Judge  
Hidalgo County  
P.O. Box 607  
Mission, Texas 78573

RE: Hidalgo County  
TCEQ Docket No. 2006-1682-MSW-E; TCEQ Permit No. 1727AE  
Agreed Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Enforcement Coordinator or the Staff Attorney. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3319.

Sincerely,

A handwritten signature in cursive script, appearing to read "LaDonna Castañuela".

LaDonna Castañuela  
Chief Clerk

LDC/lg

Enclosure

cc: Dana Shuler, Enforcement Coordinator, TCEQ Enforcement Division (MC 128)  
Melissa Keller, SEP Coordinator, TCEQ Enforcement Division (MC 219)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a Texas Commission on Environmental Quality document which is filed in the permanent records of the Commission. Given under my hand and the seal of office on

*LaDonna Castanuela* **AUG 28 2007**

LaDonna Castanuela, Chief Clerk  
Texas Commission on Environmental Quality

IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
HIDALGO COUNTY  
RN102003597

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2006-1682-MSW-E

At its **AUG 22 2007** agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Hidalgo County ("the County") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the County presented this agreement to the Commission.

The County understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the County agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the County.

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

**I. FINDINGS OF FACT**

1. The County owns and operates a municipal solid waste landfill located 0.5 mile west of Farm-to-Market Road 1427 on Military Highway, Pefitas, Hidalgo County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.

12. During an investigation on July 21, 2006, TCEQ staff documented the failure to maintain and repair the intermediate cover after erosion caused by run-off. Specifically, there were areas on the north and south sides of the landfill that had erosion gullies deep enough to expose waste.
13. During an investigation on July 21, 2006, TCEQ staff documented the failure to eliminate the ponding of water in the active portion of the landfill. Specifically, water containing solid waste was ponded on the north side of the working face of the landfill.
14. During an investigation on July 21, 2006, TCEQ staff documented the failure to cut back the old infiltration layer in one-foot off-set layers (stair step), so that each foot of the existing infiltration layer edge is tied to new construction without superimposed construction joints. Specifically, it was noted that the cut into the old waste cell created a vertical wall of exposed waste measuring approximately eight feet high.
15. The County received notice of the violations on August 20, 2006.
16. The Executive Director recognizes that on August 7, 2006, the County submitted compliance documentation that demonstrated the following corrective measures at the Facility:
  - a. Tire stacks have been reduced to no more than 3 bales high;
  - b. The landfill's brush pile is currently being processed into mulch;
  - c. Six inches of well-compacted earthen material is being applied to solid waste at the end of each operating day; and
  - d. Intermediate cover has been repaired on the north and south sides of the landfill.

## II. CONCLUSIONS OF LAW

1. The County is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.002, TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, the County failed to control windblown waste, in violation of 30 TEX. ADMIN. CODE § 330.121(a) and Permit No. 1727AE Section 1.15 (Addendum to SOP-April 2004).
3. As evidenced by Finding of Fact No. 4, the County failed to prevent the improper stacking of tires and process brush from the landfill's brush pile, in violation of 30 TEX. ADMIN. CODE § 330.121(a) and Permit No. 1727AE Sections 1.12 (Addendum to SOP-April 2004) and 1.13 (Tire Storage and Processing Facility Operating Plan 3.0).
4. As evidenced by Finding of Fact No. 5, the County failed to prevent the disposal of waste in an unauthorized area, in violation of 30 TEX. ADMIN. CODE § 330.133(b).

### III. ORDERING PROVISIONS

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

1. The County is assessed an administrative penalty in the amount of Twelve Thousand Two Hundred Dollars (\$12,200), as set forth in Section II, Paragraph 15 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the County's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Hidalgo County, Docket No. 2006-1682-MSW-E" to:

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

2. The County shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE 7.067. As set forth in Section II, Paragraph 15 above, Twelve Thousand Two Hundred Dollars (\$12,200) of the administrative penalty shall be offset with the condition that the County implement the SEP defined in Attachment A, incorporated herein by reference. The County's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The County shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order:
    - i. Begin picking up litter scattered throughout the Facility along fences and access roads weekly or more often as necessary to minimize unhealthy, unsafe, or unsightly conditions, in accordance with 30 TEX. ADMIN. CODE § 330.121(a) and Permit No. 1727AE;
    - ii. Begin ensuring that waste is disposed of in an authorized area, in accordance with 30 TEX. ADMIN. CODE § 330.133(b);
    - iii. Confine the unloading of solid waste to as small an area as practical, in accordance with 30 TEX. ADMIN. CODE § 330.121(a) and Permit No. 1727AE;
  - b. Within 15 days after the effective date of this Agreed Order:

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  
Harlingen Regional Office  
Texas Commission on Environmental Quality  
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

4. The provisions of this Agreed Order shall apply to and be binding upon the County. The County is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the County fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the County's failure to comply is not a violation of this Agreed Order. The County has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The County shall notify the Executive Director within seven days after the County becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the County shall be made in writing to the Executive Director. Extensions are not effective until the County receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 the County if the Executive Director determines that the County has not complied with one or more of the terms or conditions in this Agreed Order.
8. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
9. This Agreed Order, issued by the Commission, shall not be admissible against the County in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

  
\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

7/17/07  
Date

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

I understand that by entering into this Agreed Order, Hidalgo County waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

  
\_\_\_\_\_  
Signature

Feb. 20 - 07  
Date

Judge J.D. Salinas III  
Name (printed or typed)  
Authorized Representative  
Hidalgo County

Hidalgo County Judge  
Title  
**APPROVED BY**  
**COMMISSIONERS' COURT**  
ON: FEB 20 2007

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

Attachment A

Docket Number: 2006-1682-MSW-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** Hidalgo County

**Payable Penalty Amount:** Twelve Thousand Two Hundred Dollars (\$12,200)

**SEP Amount:** Twelve Thousand Two Hundred Dollars (\$12,200)

**Type of SEP:** Pre-approved

**Third-Party Recipient:** The Rensselaerville Institute-“Self-Help Rio Grande”

**Location of SEP:** Hidalgo County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of 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 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 will contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, provide low income homeowners with failing on-site wastewater treatment systems or no system at all, with technical and financial assistance to install, repair, or replace those water and wastewater sewage systems. To reduce costs, the Third-Party Recipient teams with low income homeowners to solve water and wastewater problems by working together to build water and wastewater infrastructures. SEP contributions are to be used for material and labor costs.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from homes with substandard water and wastewater service. This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from homes with substandard water and wastewater service.

**C. Minimum Expenditure**

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

Hidalgo County  
Agreed Order - Attachment A

## 2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

The Rensselaerville Institute  
Marion Frowein  
63 Huyck Road  
Rensselaerville, NY 12147

check goes  
here

## 3. Records and Reporting

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

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

## 4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

## 5. Publicity

Any public statements concerning this SEP 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.

Hidalgo County  
Agreed Order - Attachment A

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, 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 identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.