

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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APR 10 2017

Enforcement Division

IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BLUE RIDGE LANDFILL TX, LP
RN102610102

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2016-1923-AIR-E

I. JURISDICTION AND STIPULATIONS

On JUL 07 2017, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Blue Ridge Landfill TX, LP (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Duncan C. Norton of the Law Firm Lloyd Gosselink Rochelle & Townsend, P.C., together stipulate that:

1. The Respondent owns and operates a landfill located at 2200 Farm-to-Market Road 521 in Fresno, Fort Bend County, Texas (the "Site"). The Site consists or consisted of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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. 382 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 \$43,712 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$17,485 of the penalty and \$8,742 of the penalty 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, \$17,485 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.
9. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Site:
 - a. By May 31, 2016, modified sump systems so that vent lines from condensate sumps are routed back into the sump system;
 - b. By October 3, 2016, installed covers on the leachate tanks and solidification pits;
 - c. By November 30, 2016, completed the expedited expansion and upgrade of the gas collection system; and
 - d. By January 1, 2017, implemented revised surface emissions monitoring and reporting procedures and protocols.

II. ALLEGATIONS

1. During an investigation conducted from May 4, 2016 through August 18, 2016, an investigator documented that the Respondent failed to prevent nuisance odor conditions, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b). Specifically, during odor surveys conducted off-site, TCEQ staff detected very strong and highly offensive landfill gas/honeysuckle odors on May 4, 2016, May 5, 2016, June 6, 2016, and June 7, 2016; strong and highly offensive landfill gas/honeysuckle odors on May 23, 2016 and May 24, 2016; and moderate and highly offensive landfill gas/honeysuckle odors on June 23, 2016 coming from the Site. TCEQ staff experienced nausea due to the odors on May 4, 2016, May 23, 2016, June 7, 2016,

and June 23, 2016. Based on the weekly frequency of the odors detected, TCEQ staff documented an odor nuisance on May 24, 2016 and June 23, 2016.

2. During an investigation conducted from October 18, 2016 through November 10, 2016, an investigator documented that the Respondent failed to monitor surface concentrations in accordance with 40 CODE OF FEDERAL REGULATIONS ("CFR") Part 60, Subpart WWW, in violation of 30 TEX. ADMIN. CODE §§ 101.20(1) and 122.143(4), 40 CFR § 60.756(f), Federal Operating Permit No. 01472/Municipal Solid Waste Landfill General Operating Permit No. 517, Permit Tables (c)(20) and (c)(41), and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, the Respondent conducted and reported surface concentration monitoring at the Site; however, TCEQ staff performed surface concentration monitoring of the Site and determined that the surface concentration monitoring was not performed in accordance with 40 CFR Part 60, Subpart WWW for the quarterly periods from January 1, 2015 through June 30, 2016.

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 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: Blue Ridge Landfill TX, LP, Docket No. 2016-1923-AIR-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 4. The amount of \$17,485 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. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, conduct monitoring of Site operations, in accordance with the revised surface emissions monitoring and

reporting procedures and protocols until the Plan that is approved by the Executive Director is implemented;

- b. Within 30 days after the effective date of this Order, submit a plan to (i) the Air Section Manager of the TCEQ Houston Regional Office and (ii) the TCEQ Order Compliance Team at the respective addresses listed in Ordering Provision No. 3.j, setting forth industry best management practices designed to prevent the emission of odors from all potential sources at the Site (the "Plan"). The Plan shall, at a minimum, include an implementation schedule with milestones, all relevant standard operating procedures, and maintenance practices designed to:
 - i. Minimize odors from, but not limited to:
 - 1. All inactive and active areas at the Site, including the landfill cover;
 - 2. Storage tanks, including the leachate tanks;
 - 3. Solidification pits;
 - 4. Leachate collection and management system; and
 - 5. Landfill Gas Collection and Control System.
 - ii. Monitor for, detect, and respond to potential off-site nuisance odors, including at a minimum:
 - 1. Procedures for conducting 24-hour odor surveillance to include the activation of a 24-hour telephone hotline for odor complaints and continuous 24-hour sulfur monitoring of the property line;
 - 2. Procedures for investigating and timely mitigating odors detected at the property line;
 - 3. Procedures for receiving and documenting reports of odors detected off-site from the public;
 - 4. Procedures for responding promptly to odor complaints including corrective actions to mitigate odor impacts; and
 - 5. Maintaining records of all activities relating to off-site odor impacts, including property line and off-site surveillance, odor reports received from the public, investigative activities to identify the odor source, and all corrective actions taken to mitigate the odor.
 - iii. Comply with the surface emissions monitoring requirements in accordance with 40 CFR Part 60, Subpart WWW by, but not limited to,:

1. Developing and implementing detailed written procedures for monitoring surface concentrations. These procedures shall include a description of how surface concentrations will be measured along the entire perimeter of the collection area and along a pattern that traverses the landfill at 30 meter intervals for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitoring equipment and shall describe proper probe placement within five to ten centimeters of the ground;
 2. Procedures for ensuring and documenting that 40 CFR Part 60, Appendix A, Method 21 (as modified by Subpart WWW) is followed, including proper calibration of monitoring equipment prior to commencing a surface monitoring activity and use of proper calibration gases;
 3. Developing and implementing a Quality Assurance Project Plan; and
 4. Notifying the TCEQ Houston Regional Office at least 72 hours in advance of each quarterly monitoring event.
- iv. Maintain detailed records of the activities performed to comply with the Plan.
- c. Respond completely and adequately, as determined by the TCEQ, to all requests for information and/or or modification made by the Executive Director concerning the Plan within 10 business days after the date of such request, or by any other deadline specified in writing;
- d. Within 45 days after the effective date of this Order, submit written certification as described in Ordering Provision No. 3.j to demonstrate compliance with Ordering Provision No. 3.a;
- e. Upon Executive Director approval of the Plan, begin implementing all provisions of the approved Plan, in accordance with the approved schedule;
- f. Within 60 days after Executive Director approval of the Plan, submit an administratively complete permit modification application to incorporate the approved Plan into the Part IV – Site Operating Plan, Operating Procedures, 4.10 Air Quality and Odor Management Plan in Municipal Solid Waste Permit No. 1505A to:

Waste Permits Division, MC 126
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- g. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit modification application within 30 days after the date of such request, or by any other deadline specified in writing;
- h. Within 75 days after Executive Director approval of the Plan, submit written certification as described in Ordering Provision No. 3.j to demonstrate compliance with Ordering Provision No. 3.f;
- i. Within 30 days after completion of the approved Plan implementation, submit written certification as described in Ordering Provision No. 3.j to demonstrate compliance with Ordering Provision No. 3.e; and
- j. Within 240 days after Executive Director approval of the Plan, submit written certification that the permit modification has been obtained, and include detailed supporting documentation including photographs, receipts, and/or other records. 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:

Air Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Street, Suite H
Houston, Texas 77023-1452

- 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 Site 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

Bryan W. Shaw
For the Commission

7-12-17
Date

Brandon Rogers
For the Executive Director

5/2/17
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.

Brandon Rogers
Signature

04/07/2017
Date

Brandon Rogers
Name (Printed or typed)
Authorized Representative of
Blue Ridge Landfill TX, LP

General Manager
Title

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

Attachment A
Docket Number: 2016-1923-AIR-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Blue Ridge Landfill TX, LP
Payable Penalty Amount:	\$34,970
SEP Offset Amount:	\$17,485
Type of SEP:	Contribution to a Third-Party Pre-Approved SEP
Third-Party Administrator:	Texas Association of Resource Conservation and Development Areas, Inc.
Project Name:	<i>Tire Collection Events and Cleanup of Abandoned Tire Sites</i>
Location of SEP:	Fort Bend County: Brazos River Basin, Gulf Coast Aquifer

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 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 Association of Resource Conservation and Development Areas, Inc. ("RC&D")** for the *Tire Collection Events and Cleanup of Abandoned Tire Sites* project. The contribution will be used in accordance with the SEP Agreement between the Third-Party Administrator and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to coordinate with local city and county government officials and private entities ("Partner Entities") to conduct tire collection events where residents will be able to drop off tires for proper disposal or recycling ("Collection Events"), or to clean sites where tires have been disposed of illegally ("Site Cleanups").

Texas RC&D shall ensure that collected tires, debris, and waste are properly transported to and disposed at an authorized disposal site, and if a licensed hauler is needed for tires or other regulated waste collected from sites, Texas RC&D shall ensure that only properly licensed haulers are used for transport and disposal of tires and regulated wastes. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Blue Ridge Landfill TX, LP
Agreed Order - Attachment A

All dollars contributed will be used solely for the direct cost of the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that is not able to be 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 it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

This SEP will provide an environmental benefit by providing communities with a free and convenient means for safe and proper disposal of tires and by reducing the dangers and health threats associated with illegally dumped tires.

The health risks associated with illegal dumping are significant. Areas used for illegal tire dumping may be easily accessible to people, especially children, who are vulnerable to the physical hazards posed by abandoned tires. Rodents, insects, and other vermin attracted to dump sites may also pose health risks. Tire dump sites which contain scrap tires pose an ideal breeding ground for mosquitoes, which can breed 100 times faster in the warm, stagnant water standing in scrap tire casings. Severe illnesses, including West Nile Virus, have been attributed to disease-carrying mosquitoes. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of air, surface water, ground water, and soil. In addition, neighborhoods have been evacuated and property damage has been significant due to tire dump sites that caught fire. Illegal tire dumping can also impact drainage of runoff, making areas more susceptible to flooding when wastes block waterways. Open burning at tire dump sites can cause forest fires and erosion as fires burn away trees and undergrowth. Tire dumping has a negative impact on trees and wildlife, and runoff from tire dumpsites may contain chemicals that can contaminate wells and surface water used for drinking.

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 Association of RC&D SEP** and shall mail the contribution with a copy of the Agreed Order to:

Texas Association of RC&D Areas, Inc.
Attn.: Jerry Pearce, Executive Director
P.O. Box 2533
Victoria, Texas 77902

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:

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, as 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. The Respondent 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.