

environmental rules and regulations promulgated by Texas Commission on Environmental Quality and Harris County. The Court approves it in all respects.

IN AGREEING TO THIS JUDGMENT THE PARTIES HEREBY STIPULATE TO THE FOLLOWING:

- A. that they understand and agree to the terms of this Judgment;
- B. that this Judgment represents a compromise and settlement of all matters placed in issue by Plaintiffs and Defendant in the captioned litigation;
- C. that the occurrence of any violation by Defendant is in dispute and the entry of this Judgment shall not constitute an admission by Defendant of any violation alleged by Plaintiffs in the captioned litigation;
- D. that this Judgment complies with all statutory, jurisdictional and procedural requisites necessary for entry and enforcement;
- E. that Plaintiffs and Defendant agree to the terms of this Judgment and waive the right to appeal its validity;
- F. that Plaintiffs and Defendant agree that they actively participated in the negotiations leading up to this Judgment, they understand the duties placed upon them by it, they have read the terms of this Judgment, and that the Judgment is specific in its terms and complies with Rule 683 of the Texas Rules of Civil Procedure;
- G. that Defendant is willing and able to comply with the terms of the Judgment and waives the necessity of the issuance and service of a writ of injunction pursuant to Rules 688 and 689 of the Texas Rules of Civil Procedure; and
- H. that this Judgment is enforceable pursuant to Rule 692 of the Texas Rules of Civil Procedure.

I. GENERAL PROVISIONS

THE FOLLOWING GENERAL PROVISIONS ARE ORDERED, ADJUDGED, AND DECREED AS THE JUDGMENT OF THIS COURT.

A. This Judgment finally disposes of all claims in the captioned litigation by Plaintiffs against Defendant.

B. Defendant operates a construction company that employed the use of a trench burner in Harris County, Texas.

C. Where a document or payment is required or permitted to be delivered to the Harris County Attorney's Office, Compliance Division, under the terms of the Judgment, delivery shall constitute and shall require the actual receipt by the Harris County Attorney's Office, Compliance Division, 1310 Prairie, Suite 940, Houston, Texas 77002, ATTN: Rock W.A. Owens, before the time for completion of the action.

D. Where a document or payment is required or permitted to be delivered to the Office of Attorney General, Natural Resources Division, under the terms of the Judgment, delivery shall constitute and shall require the actual receipt by the Office of Attorney General, Natural Resources Division, 300 West 15th Street, 10th Floor, Clements Building, Austin, Texas 78701, ATTN: Karen W. Kornell, referenced to Attorney General Number 041920125, before the time for completion of the action.

E. This Judgment shall be effective immediately upon signing by the Court.

F. Plaintiffs shall be allowed such process and writs as may be reasonable or necessary for the enforcement of this Judgment unless specifically provided otherwise herein.

G. Nothing in this Judgment shall in any way limit or lessen Defendant's responsibilities or potential liabilities for future violations of the Texas Clean Air Act or for violations of any other laws.

II. PERMANENT INJUNCTION

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT PLAINTIFFS' APPLICATION FOR AN INJUNCTION IS GRANTED AND APPROVED AND DEFENDANT AND THEIR AGENTS; ASSIGNS, SERVANTS, AND EMPLOYEES, ARE HEREBY IMMEDIATELY MANDATORILY AND PERMANENTLY ENJOINED AS FOLLOWS:

A. Defendant, Rebel Contractors, Inc., is permanently enjoined from conducting any outdoor burning in violation of 30 T.A.C. § 101.4, whether conducted under the terms of a permit or the Texas Commission on Environmental Quality Permit by Rule provisions of 30 T.A.C. § 106.496, if the burning results in causing, suffering, allowing, or permitting an air discharge in such concentration and of such duration as is or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

B. Defendant, Rebel Contractors, Inc., is permanently enjoined from violating 30 T.A.C. § 101.4.

C. Defendant, Rebel Contractors, Inc., is permanently enjoined from conducting trench burning operations in a manner that violates the Texas Commission on Environmental Quality Permit by Rule provisions of 30 T.A.C. § 106.496. A true and correct copy of 30 T.A.C. § 106.496 is attached to this Agreed Temporary Injunction as "Exhibit A".

D. Defendant, Rebel Contractors, Inc. is permanently enjoined from outdoor burning in a manner that violates 30 T.A.C. § 111.201.

E. Defendant, Rebel Contractors, Inc., is permanently enjoined from violating 30 T.A.C 330.5(c).

II. CIVIL PENALTIES, FEES, AND COSTS

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT THE FOLLOWING CIVIL PENALTIES, ATTORNEY'S FEES, AND COSTS SHALL BE RECOVERED BY PLAINTIFFS FROM AND AGAINST DEFENDANT:

A. A total of TWENTY-FIVE THOUSAND FIVE DOLLARS (\$25,000.00), consisting of a civil penalty of NINETEEN THOUSAND NINE HUNDRED TWENTY DOLLARS (\$19,920.00), and attorneys' fees and costs of FIVE THOUSAND EIGHTY DOLLARS (\$5,080.00) (\$3,580.00 attorneys' fees is awarded to Harris County and \$1,500.00 attorneys' fees is awarded to the State of Texas), to be paid by DEFENDANT pursuant to the following terms and conditions:

(1) DEFENDANT shall deliver two (2) initial payments totaling FIVE THOUSAND EIGHTY DOLLARS (\$5,080.00) to the Harris County Attorney's Office, Compliance Division, on the date this Judgment is signed by Defendant. These payments shall be made as follows: THREE THOUSAND FIVE HUNDRED EIGHTY DOLLARS (\$3,580.00) to Harris County and ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) to the State of Texas.

2. DEFENDANT shall deliver twelve (12) additional payments totaling NINETEEN THOUSAND NINE HUNDRED TWENTY DOLLARS (\$19,920.00). Each of these payments shall be in the sum of ONE THOUSAND SIX HUNDRED SIXTY-SIX DOLLARS (\$1,660.00) per month for twelve (12) consecutive calendar months, with the first

month's payment being due thirty (30) days from the date the Judgment is signed by the Court. Each of these payments shall be made with two separate instruments as follows: EIGHT HUNDRED THIRTY DOLLARS (\$830.00) to Harris County and EIGHT HUNDRED THIRTY DOLLARS (\$830.00) to the State of Texas.

B. Defendant shall bear all costs of court.

C. It is further ORDERED that the Clerk of Court issue the writ of injunction in this cause.

D. It is further ORDERED that pursuant to Texas Civil Practices and Remedies Code section 6.001, Plaintiffs are not required to file bond in support of this Order.

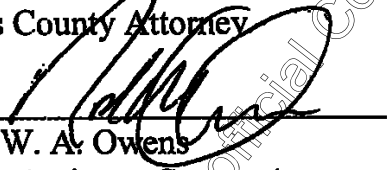
The Court denies all relief not specifically granted in this Judgment.

SIGNED this _____ day of JAN 04 2005 ~~2004~~


JUDGE PRESIDING

APPROVED AND ENTRY REQUESTED:

MIKE STAFFORD
Harris County Attorney

By: 
Rock W. A. Owens
Senior Assistant County Attorney
Compliance Division
State Bar No. 15382100
1310 Prairie, Suite 940
Houston, Texas 77002
(713) 755-5908- Telephone
(713) 755-2680- Facsimile

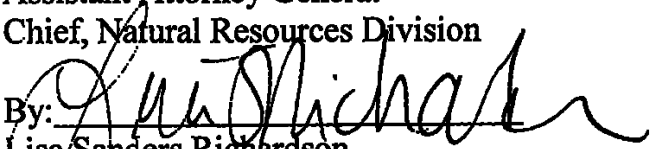
**ATTORNEYS FOR PLAINTIFF,
HARRIS COUNTY**

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

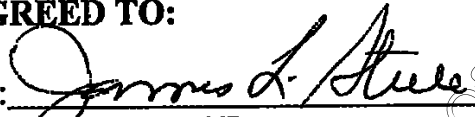
KAREN W. KORNEILL
Assistant Attorney General
Chief, Natural Resources Division

By: 
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**ATTORNEYS FOR PLAINTIFF,
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED TO:

By: 
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716 Willard
Houston, Texas 77006
(713) 524-0722
FAX (713) 526-7224

**ATTORNEY FOR DEFENDANT,
REBEL CONTRACTORS, INC.**

By: 
Authorized Agent or Officer

REBEL CONTRACTORS, INC.

Official Copy Office of Marilyn Burgess District Clerk

Texas Administrative Code

<u>TITLE 30</u>	ENVIRONMENTAL QUALITY
<u>PART 1</u>	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
<u>CHAPTER 106</u>	PERMITS BY RULE
<u>SUBCHAPTER V</u>	THERMAL CONTROL DEVICES
RULE §106.496	Trench Burners

Any trench burner that operates according to the following conditions of this section is permitted by rule.

- (1) The trench burner shall be operated at least 300 feet from any recreational area, residence, or other structure not occupied or used solely by the owner of the trench burner or the owner of the property upon which the trench burner is located.
- (2) The trench shall be opened in undisturbed soil not previously excavated, built up, compacted, or used in any type of landfill operation.
- (3) The trench shall be no wider than 12 feet with a minimum depth of ten feet. The maximum length of the burning area as measured along the bottom of the trench shall not exceed by more than five feet the length of the manifold. The walls of the trench must be maintained such that they remain vertical.
- (4) Operation of this trench burner is limited to the hours between 8:00 a.m. and 6:00 p.m., and is limited to a total of eight hours per day and 1,000 hours per year. A written record or log of the hours of operation of this trench burner shall be maintained at the site and made available at the request of personnel from the commission or any local air pollution control program having jurisdiction. This record or log shall be organized such that the compliance status of this special condition can be readily determined.
- (5) Material shall not be added to the trench such that the material will not be consumed by 6:00 p.m.
- (6) The blower shall remain on until all material is consumed so that any remaining material in the trench will not smoke when the blower is turned off.
- (7) This trench burner shall not be operated when an air stagnation advisory is in effect for the area in which the trench burner is located.
- (8) Opacity of emissions from the trench and from operation of the blower shall not exceed 20% averaged over a five-minute period, except for a start-up period which

shall not exceed 20 minutes. Opacity shall be measured as outlined in Chapter 13, "Visible Emissions Evaluation," of the commission's Sampling Procedures Manual, as published in January 1983, and as subsequently revised.

- (9) Material to be burned in the trench is limited to not more than 7.0 tons per hour of trees, brush, and untreated lumber. Material not being worked and material being stockpiled to be burned at a later date must be kept at least 75 feet from the trench.
- (10) Material shall not be added to the trench in such a manner as to be stacked above the air curtain at any time.
- (11) The ash generated by this operation shall be removed from the trench as necessary in order to maintain the minimum trench depth of ten feet. The ash shall be removed in such a manner as to minimize the ash becoming airborne. All material removed from the trench must be completely extinguished before being landfilled or placed in contact with combustible material to prevent combustion outside of the trench or in the landfill.
- (12) A copy of this section shall be kept at the burn site and made available at the request of personnel from the commission or any local air pollution control program having jurisdiction.
- (13) Operating instructions shall be posted at the burn site and all operators shall read and have knowledge of these instructions. The operating instructions shall be made available at the request of personnel from the commission or any local air pollution control program having jurisdiction.
- (14) An operator shall remain with the trench burner at all times when it is operating.
- (15) Upon notification by a representative of the commission or any local air pollution control program having jurisdiction that the trench burner is not complying with the conditions of this section, no additional material shall be added to the trench until compliance with such conditions has been effected.
- (16) The Texas Natural Resource Conservation Commission (TNRCC) shall be notified by the owner or operator of the trench burner prior to use of the trench burner at a TNRCC permitted landfill.
- (17) Upon removal of the trench burner from the burn site, the trench shall be completely filled with uncombustible material.
- (18) Before operation of the facility begins at any site, written site approval shall be received from the executive director and any local air pollution control program having jurisdiction in the area and the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration in Austin using Form PI-7.