EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0755-MSW-E **TCEQ ID:** RN105137418 **CASE NO.:** 33472

RESPONDENT NAME: Alvin Washington dba Organic Resource Management

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
X MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Organic Resource Management, 5100 Wolf Lane, Del Valle, Travis County

TYPE OF OPERATION: Unauthorized brush and mulch recycling facility

SMALL BUSINESS: __X__ **Yes** ____ **No**

OTHER SIGNIFICANT MATTERS: A complaint was received February 22, 2006, alleging the Respondent was not following the rules pertaining registration and run-off. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on October 8, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Marlin Bullard, Enforcement Division, Enforcement Team 7, MC R-09, (254) 761-3038; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Alvin L. Washington, Owner, Organic Resource Management, P.O. Box 14872, Austin, Texas 78761
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: _X_ Complaint ___ Routine ___ Enforcement Follow-up ___ Records Review **Date(s) of Complaints Relating to this Case:** February 22, 2006 **Date of Investigation Relating to this Case:** April 24, 2007 **Date of NOV/NOE Relating to this Case:** April 26, 2007 (NOE) **Background Facts:** This was a complaint investigation. One violation was documented. **WASTE** Failed to obtain a registration or other authorization for the storage and processing of brush and mulch. Specifically, the Respondent was operating a brush and mulch recycling facility prior to obtaining authorization from the TCEQ, as documented during an investigation [30 TEX. ADMIN. CODE § 330.9(a)].	**Total Assessed:** $1,050 **Total Deferred:** $210 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $840 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Immediately upon the effective date of this Agreed Order, cease accepting and/or processing any additional brush and/or mulch at the Facility until authorized by the TCEQ; b. Within 30 days after the effective date of this Agreed Order: i. Obtain a registration and/or authorization to operate under 30 TEX. ADMIN CODE § 330.9 and/or submit an administratively complete Notice of Intent; or ii. Remove all waste and dispose of at an authorized facility; and c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.

Additional ID No(s).: None

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision April 26, 2007*

TCEQ

DATES						
Assigned	30-Apr-2007					
PCW	10-May-2007	Screening	8-May-2007	EPA Due		

RESPONDENT/FACILITY INFORMATION

Respondent	Alvin Washington dba Organic Resource Management		
Reg. Ent. Ref. No.	RN105137418		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	33472	No. of Violations	1
Docket No.	2007-0755-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Marlin Bullard
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty $ Limit	Minimum $0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1*: $1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 5% Enhancement — *Subtotals 2, 3, & 7*: $50

Notes: Enhancement for one NOV with the same or similar violations at this site within the past five years.

Culpability — No — 0% Enhancement — *Subtotal 4*: $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5*: $0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

0% Enhancement* — *Subtotal 6*: $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$35
Approx. Cost of Compliance	$1,000

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: $1,050

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment*: $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount: $1,050

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: $1,050

DEFERRAL — 20% Reduction — *Adjustment*: -$210

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY: $840

Screening Date 8-May-2007 **Docket No.** 2007-0755-MSW-E **PCW**

Respondent Alvin Washington dba Organic Resource Management *Policy Revision 2 (September 2002)*

Case ID No. 33472 *PCW Revision April 26, 2007*

Reg. Ent. Reference No. RN105137418

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*number of judgements or consent decrees meeting criteria*)	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 (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	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 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
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) 5%

>> Repeat Violator (Subtotal 3)

No ***Adjustment Percentage (Subtotal 3)*** 0%

>> Compliance History Person Classification (Subtotal 7)

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

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with the same or similar violations at this site within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 8-May-2007 **Docket No.** 2007-0755-MSW-E **PCW**

Respondent Alvin Washington dba Organic Resource Management *Policy Revision 2 (September 2002)*

Case ID No. 33472 *PCW Revision April 26, 2007*

Reg. Ent. Reference No. RN105137418

Media [Statute] Municipal Solid Waste

Enf. Coordinator Marlin Bullard

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 330.9(a)

Violation Description Failed to obtain a registration or other authorization for the storage and processing of brush and mulch. Specifically, the respondent was operating a brush and mulch recycling facility prior to obtaining authorization from the TCEQ, as documented during an investigation conducted on April 24, 2007.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

OR

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 14 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the April 24, 2007 investigation date to the May 8, 2007 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $35

Statutory Limit Test

Violation Final Penalty Total $1,050

This violation Final Assessed Penalty (adjusted for limits) $1,050

Economic Benefit Worksheet

Respondent Alvin Washington dba Organic Resource Management
Case ID No. 33472
Reg. Ent. Reference No. RN105137418
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)	$1,000	24-Apr-2007	8-Jan-2008	0.7	$35	n/a	$35
Notes for DELAYED costs	Estimated cost to obtain a registration and/or complete and submit an administratively complete Notice of Intent in accordance with 30 TAC § 330.11 to the TCEQ. The Date Required is the date of the investigation and the Final Date is the estimated date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $1,000 **TOTAL** $35

Compliance History

Customer/Respondent/Owner-Operator:	CN603139163	WASHINGTON, ALVIN	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN105137418	ORGANIC RESOURCE MANAGEMENT	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):				
Location:	5100 WOLF LN, DEL VALLE, TX, 78617		Rating Date: 9/1/2006	Repeat Violator: NO
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	May 10, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 10, 2002 to May 10, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Marlin Bullard Phone: (254) 761-3038

Site Compliance History Components

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 of the site during the compliance period?	No
3. If Yes, who is the current owner?	N/A
4. if Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership occur?	N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

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

1 02/01/2007 (536344)
2 04/27/2007 (555508)

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

Date: 01/31/2007 (536344)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter A 330.7(a)
Description: Failure to obtain authorization according to 30 Texas Administrative Code (TAC) 330.7 - No person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste unless such activity is authorized by a permit or other authorization from the commission.

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	§	**BEFORE THE**
CONCERNING	§	
ALVIN WASHINGTION DBA	§	**TEXAS COMMISSION ON**
ORGANIC RESOURCE	§	
MANAGEMENT	§	**ENVIRONMENTAL QUALITY**
RN105137418	§	

AGREED ORDER
DOCKET NO. 2007-0755-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Alvin Washington dba Organic Resource Management ("Mr. Washington") 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 Mr. Washington appear before the Commission and together stipulate that:

1. Mr. Washington owns and operates an unauthorized brush and mulch recycling facility at 5100 Wolf Lane in Del Valle, Travis 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.

3. The Commission and Mr. Washington agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Washington is subject to the Commission's jurisdiction.

4. Mr. Washington received notice of the violations alleged in Section II ("Allegations") on or about May 1, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Washington of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Fifty Dollars ($1,050) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Washington has paid Eight Hundred Forty Dollars ($840) of the administrative penalty and Two Hundred Ten Dollars ($210) is deferred contingent upon Mr. Washington's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Washington fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Washington to pay all or part of the deferred penalty.

7. 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.

8. The Executive Director of the TCEQ and Mr. Washington have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. 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 Mr. Washington has not complied with one or more of the terms or conditions in this Agreed Order.

10. 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.

11. 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.

II. ALLEGATIONS

As owner and operator of the Facility, Mr. Washington is alleged to have failed to obtain a registration or other authorization for the storage and processing of brush and mulch, in violation of 30 TEX. ADMIN. CODE § 330.9(a). Specifically, Mr. Washington was operating a brush and mulch recycling facility prior to obtaining authorization from the TCEQ, as documented during an investigation conducted on April 24, 2007.

III. DENIALS

Mr. Washington generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Washington pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Washington's compliance with all the terms and conditions set forth in this Agreed 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. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Alvin Washington dba Organic Resource Management, Docket No. 2007-0755-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. It is further ordered that Mr. Washington shall undertake the following technical requirements:

a. Immediately upon the effective date of this Agreed Order, cease accepting and/or processing any additional brush and/or mulch at the Facility until authorized by the TCEQ;

b. Within 30 days after the effective date of this Agreed Order:

i. Obtain a registration and/or authorization to operate under 30 TEX. ADMIN. CODE § 330.9 and/or submit an administratively complete Notice of Intent (NOI), in accordance with 30 TEX. ADMIN. CODE § 330.11 to:

Texas Commission on Environmental Quality
Waste Permits Division
Municipal Solid Waste Permits Section
PO Box 13087
Austin, Texas 78711-3087; or

ii. Remove all waste and dispose of at an authorized facility; and

c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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 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
Austin Regional Office
Texas Commission on Environmental Quality
2800 S IH 35, Suite 100
Austin, Texas 78704-5712

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Washington. Mr. Washington is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If Mr. Washington 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, Mr. Washington's failure to comply is not a violation of this Agreed Order. Mr. Washington shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Washington shall notify the Executive Director within seven days after Mr. Washington becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. 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 Mr. Washington shall be made in writing to the Executive Director. Extensions are not effective until Mr. Washington receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Washington in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed 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.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Washington, or three days after the date on which the Commission mails notice of the Order to Mr. Washington, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

RECEIVED
AUG - 1 2007
TCEQ
REGION

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

10/27/2007
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, 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.

Alvin L. Washington
Signature

July-30-07
Date

Alvin L. Washington
Name (Printed or typed)
Authorized Representative of
Alvin Washington dba Organic Resource Management

Owner
Title

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