

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2006-1305-MLM-E    **TCEQ ID:** RN101463990    **CASE NO.:** 30739  
**RESPONDENT NAME:** Northeast Service, Inc. dba Horton Tree Service

**ORDER TYPE:**

|   |   |  |   |
|---|---|--|---|
| <input checked="" type="checkbox"/> 1660 AGREED ORDER | <input type="checkbox"/> FINDINGS AGREED ORDER  | <input type="checkbox"/> AMENDED ORDER   | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL<br>ENDANGERMENT ORDER |
| <input type="checkbox"/> SHUTDOWN ORDER               | <input type="checkbox"/> FINDINGS DEFAULT ORDER | <input type="checkbox"/> EMERGENCY ORDER |   |

**CASE TYPE:**

|  |  |   |   |
|--|--|---|---|
| <input type="checkbox"/> AGRICULTURE                                   | <input checked="" type="checkbox"/> AIR          | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE | <input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE |
| <input type="checkbox"/> OCCUPATIONAL CERTIFICATION                    | <input type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> PUBLIC WATER SUPPLY            | <input type="checkbox"/> RADIOACTIVE WASTE                |
| <input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> SEWAGE SLUDGE           | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL  | <input type="checkbox"/> USED OIL                         |
| <input type="checkbox"/> USED OIL FILTER                               | <input type="checkbox"/> WATER QUALITY           |   |   |

**SITE WHERE VIOLATION(S) OCCURRED:** Horton Tree Service, 5100 Glenn Court, Fort Worth, Tarrant County

**TYPE OF OPERATION:** Unauthorized waste disposal site

**SMALL BUSINESS:**     Yes     No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on January 29, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney/SEP Coordinator:** None

**TCEQ Enforcement Coordinator:** Ms. Cari-Michel La Caille, Enforcement Division, Enforcement Section II, MC 219, (512) 239-1387; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

**TCEQ Field Investigator:** Mr. Jim Kerlin, DFW Regional Office, MC R-04, (817) 588-5800

**Respondent:** Mr. Homer Horton, Owner, Horton Tree Service, P.O. Box 15246, Fort Worth, Texas 76119-0246

**Respondent's Attorney:** Not represented by counsel on this enforcement matter

**VIOLATION SUMMARY CHART:**

| VIOLATION INFORMATION  | PENALTY CONSIDERATIONS  | CORRECTIVE ACTIONS TAKEN/REQUIRED  |
|--|---|--|
| <p><b>Type of Investigation:</b> <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine<br/> <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 7, 2006</p> <p><b>Date of NOE Relating to this Case:</b> July 18, 2006 (NOE)</p> <p><b>Background Facts:</b> This investigation was an immediate emergency response by the TCEQ to a brush fire at the unauthorized waste disposal site. Two violations were documented.</p> <p><b>WASTE</b></p> <p>1) Failed to obtain proper TCEQ authorization to operate as a landfill facility [30 TEX. ADMIN. CODE § 330.7(a)].</p> <p><b>AIR</b></p> <p>2) Failed to obtain proper TCEQ authorization prior to the commencement of outdoor burning activities [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> | <p><b>Total Assessed:</b> \$5,500</p> <p><b>Total Deferred:</b> \$1,100<br/> <input checked="" type="checkbox"/> Expedited Settlement<br/> <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$4,400</p> <p><b>Site Compliance History Classification:</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> | <p><b>Corrective Actions Taken:</b></p> <p>1) The Executive Director recognizes that Northeast submitted to the TCEQ a corrective action plan on June 30, 2006 and actual remediation of the Site commenced on July 7, 2006.</p> <p><b>Ordering Provision:</b></p> <p>2) The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease the receipt, storage, processing and/or disposal of waste at the Site until proper authorization is obtained;</p> <p>b. Immediately upon the effective date of this Agreed Order, cease the unauthorized burning of waste at the Site;</p> <p>c. Within 30 days after the effective date of this Agreed Order, remove any residual ash and/or debris that is a result of the June 7, 2006 burning activity from the Site and properly dispose of the waste at an authorized waste disposal facility and extinguish any on-going subsurface combustion of waste that may still exist; and</p> <p>d. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 2.a., 2.b. and 2.c.</p> |



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

|              |          |              |           |             |         |  |
|--------------|----------|--------------|-----------|-------------|---------|--|
| <b>DATES</b> | Assigned | 24-July-2006 | Screening | 12-Aug-2006 | EPA Due |  |
|              | PCW      | 12-Aug-2006  |           |             |         |  |

|  |   |
|--|---|
| <b>RESPONDENT/FACILITY INFORMATION</b> |   |
| Respondent                             | Northeast Service, Inc. dba Horton Tree Service |
| Reg. Ent. Ref. No.                     | RN101463990                                     |
| Facility/Site Region                   | 4-Dallas/Fort Worth                             |
| Major/Minor Source                     | Minor Source                                    |

|                                 |                       |                   |                       |
|---------------------------------|-----------------------|-------------------|-----------------------|
| <b>CASE INFORMATION</b>         |                       |                   |                       |
| Enf./Case ID No.                | 30739                 | No. of Violations | 2                     |
| Docket No.                      | 2006-1305-MLM-E       | Order Type        | 1660                  |
| Media Program(s)                | Municipal Solid Waste | Enf. Coordinator  | Cari-Michel La Caille |
| Multi-Media                     | Air Quality           | EC's Team         | Enforcement Team 4    |
| Admin. Penalty \$ Limit Minimum | \$0                   | Maximum           | \$10,000              |

## Penalty Calculation Section

|   |                   |         |
|---|-------------------|---------|
| <b>TOTAL BASE PENALTY (Sum of violation base penalties)</b> | <b>Subtotal 1</b> | \$5,500 |
|---|-------------------|---------|

### 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> | 0% Enhancement | <b>Subtotals 2, 3, &amp; 7</b> | \$0 |
|---------------------------|----------------|--------------------------------|-----|

Notes: The respondent does not have any other enforcement actions within the last five years.

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

Notes: The respondent does not meet the culpability requirement.

|                                    |              |                   |     |
|------------------------------------|--------------|-------------------|-----|
| <b>Good Faith Effort to Comply</b> | 0% Reduction | <b>Subtotal 5</b> | \$0 |
|------------------------------------|--------------|-------------------|-----|

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

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

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

|                            |         |                                   |
|----------------------------|---------|-----------------------------------|
| Total EB Amounts           | \$181   | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$4,500 |                                   |

|                             |                       |         |
|-----------------------------|-----------------------|---------|
| <b>SUM OF SUBTOTALS 1-7</b> | <b>Final Subtotal</b> | \$5,500 |
|-----------------------------|-----------------------|---------|

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

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

Notes:

|                             |         |
|-----------------------------|---------|
| <b>Final Penalty Amount</b> | \$5,500 |
|-----------------------------|---------|

|                                   |                               |         |
|-----------------------------------|-------------------------------|---------|
| <b>STATUTORY LIMIT ADJUSTMENT</b> | <b>Final Assessed Penalty</b> | \$5,500 |
|-----------------------------------|-------------------------------|---------|

|                 |               |            |          |
|-----------------|---------------|------------|----------|
| <b>DEFERRAL</b> | 20% Reduction | Adjustment | -\$1,100 |
|-----------------|---------------|------------|----------|

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

Notes: Deferral offered for expedited settlement.

|                        |         |
|------------------------|---------|
| <b>PAYABLE PENALTY</b> | \$4,400 |
|------------------------|---------|

|                                |   |                           |                                    |            |
|--------------------------------|---|---------------------------|------------------------------------|------------|
| <b>Screening Date</b>          | 12-Aug-2006                                     | <b>Docket No.</b>         | 2006-1305-MLM-E                    | <b>PCW</b> |
| <b>Respondent</b>              | Northeast Service, Inc. dba Horton Tree Service |                           | Policy Revision 2 (September 2002) |            |
| <b>Case ID No.</b>             | 30739   | PCW Revision May 19, 2005 |                                    |            |
| <b>Reg. Ent. Reference No.</b> | RN101463990                                     |                           |                                    |            |
| <b>Media [Statute]</b>         | Municipal Solid Waste                           |                           |                                    |            |
| <b>Enf. Coordinator</b>        | Cari-Michel La Caille                           |                           |                                    |            |

**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)  | 0                 | 0%      |
|                               | 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)                        | 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%      |
| 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)**

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

**Adjustment Percentage (Subtotal 3)**

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

**Adjustment Percentage (Subtotal 7)**

**>> Compliance History Summary**

**Compliance History Notes**

**Total Adjustment Percentage (Subtotals 2, 3, & 7)**

|                                |  |                           |                                    |            |
|--------------------------------|--|---------------------------|------------------------------------|------------|
| <b>Screening Date</b>          | 12-Aug-2006  | <b>Docket No.</b>         | 2006-1305-MLM-E                    | <b>PCW</b> |
| <b>Respondent</b>              | Northeast Service, Inc. dba Horton Tree Service  |                           | Policy Revision 2 (September 2002) |            |
| <b>Case ID No.</b>             | 30739  | PCW Revision May 19, 2005 |                                    |            |
| <b>Reg. Ent. Reference No.</b> | RN101463990  |                           |                                    |            |
| <b>Media [Statute]</b>         | Municipal Solid Waste  |                           |                                    |            |
| <b>Enf. Coordinator</b>        | Cari-Michel La Caille  |                           |                                    |            |
| <b>Violation Number</b>        | 1  |                           |                                    |            |
| <b>Primary Rule Cite(s)</b>    | 30 Tex. Admin. Code § 330.7(a)   |                           |                                    |            |
| <b>Secondary Rule Cite(s)</b>  |  |                           |                                    |            |
| <b>Violation Description</b>   | Failure to obtain proper TCEQ authorization to operate a landfill facility, as documented in an investigation conducted on June 7, 2006. Specifically, wood, brush, lumber and other wastes were being disposed of on the property without a permit. |                           |                                    |            |
| <b>Base Penalty</b>            | \$10,000   |                           |                                    |            |

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

|         |           | Harm  |          |       |                              |
|---------|-----------|-------|----------|-------|------------------------------|
| Release |           | Major | Moderate | Minor |                              |
| OR      | Actual    |       |          |       | Percent <input type="text"/> |
|         | Potential |       |          |       |                              |

>> **Programmatic Matrix**

|  |               | Major | Moderate | Minor |  |
|--|---------------|-------|----------|-------|--|
|  | Falsification | X     |          |       | Percent <input type="text" value="10%"/> |

Matrix Notes

Adjustment

Base Penalty Subtotal

**Violation Events**

Number of Violation Events

|                                |              |                      |
|--------------------------------|--------------|----------------------|
| mark only one<br>use a small x | daily        | <input type="text"/> |
|                                | monthly      | X                    |
|                                | quarterly    | <input type="text"/> |
|                                | semiannual   | <input type="text"/> |
|                                | annual       | <input type="text"/> |
|                                | single event | <input type="text"/> |

Violation Base Penalty

Three monthly events are recommended based on the June 6, 2006 investigation to the enforcement screening date of August 12, 2006.

| Economic Benefit (EB) for this violation   | Statutory Limit Test   |
|--|--|
| Estimated EB Amount <input type="text" value="\$101"/>   | Violation Final Penalty Total <input type="text" value="\$3,000"/> |
| This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,000"/> |  |

### Economic Benefit Worksheet

Respondent: Northeast Service, Inc. dba Horton Tree Service  
 Case ID No: 30739  
 Reg. Ent. Reference No: RN101463990  
 Media [Statute]: 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 | 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)        | \$2,500 | 07-Jun-2006 | 30-Mar-2007 | 0.8 | \$101 | n/a | \$101 |

Notes for DELAYED costs: Estimated cost to obtain the proper authorization to operate a landfill facility. The date required is the date of the investigation and the final date is the projected 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

**TOTAL**

|                                |  |                   |                 |   |
|--------------------------------|--|-------------------|-----------------|---|
| <b>Screening Date</b>          | 12-Aug-2006  | <b>Docket No.</b> | 2006-1305-MLM-E | <b>PCW</b>                                |
| <b>Respondent</b>              | Northeast Service, Inc. dba Horton Tree Service  |                   |                 | <i>Policy Revision 2 (September 2002)</i> |
| <b>Case ID No.</b>             | 30739  |                   |                 | <i>PCW Revision May 19, 2005</i>          |
| <b>Reg. Ent. Reference No.</b> | RN101463990  |                   |                 |   |
| <b>Media [Statute]</b>         | Municipal Solid Waste  |                   |                 |   |
| <b>Enf. Coordinator</b>        | Cari-Michel La Caille  |                   |                 |   |
| <b>Violation Number</b>        | 2  |                   |                 |   |
| <b>Primary Rule Cite(s)</b>    | 30 Tex. Admin. Code § 111.201  |                   |                 |   |
| <b>Secondary Rule Cite(s)</b>  | Tex. Health & Safety Code § 382.085(b)   |                   |                 |   |
| <b>Violation Description</b>   | Failure to obtain proper TCEQ authorization prior to the commencement of outdoor burning activities, as documented during an investigation conducted on June 7, 2006. Specifically, wood, brush and other materials from off-site sources caught fire causing a multi-agency emergency response and continued to burn for at least 24 hours. |                   |                 |   |
|                                | <b>Base Penalty</b>  | \$10,000          |                 |   |

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

|         |           | Harm  |          |       |  |
|---------|-----------|-------|----------|-------|--|
| Release |           | Major | Moderate | Minor |  |
| OR      | Actual    |       | X        |       | Percent <input type="text" value="25%"/> |
|         | Potential |       |          |       |  |

>> **Programmatic Matrix**

|  |  | Falsification | Major | Moderate | Minor |                              |
|--|--|---------------|-------|----------|-------|------------------------------|
|  |  |               |       |          |       | Percent <input type="text"/> |

Matrix Notes: Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

|                                |              |   |
|--------------------------------|--------------|---|
| mark only one<br>use a small x | daily        |   |
|                                | monthly      |   |
|                                | quarterly    |   |
|                                | semiannual   |   |
|                                | annual       |   |
|                                | single event | X |

**Violation Base Penalty**

One single event is recommended.

**Economic Benefit (EB) for this violation**      **Statutory Limit Test**

Estimated EB Amount

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

Respondent: Northeast Service, Inc. dba Horton Tree Service  
 Case ID No: 30739  
 Reg. Ent. Reference No: RN101463990  
 Media [Statute]: 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 | 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)        | \$2,000 | 07-June-2006 | 30-Mar-2007 | 0.8 | \$80 | n/a | \$80 |

Notes for DELAYED costs: Estimated cost to properly dispose of municipal solid waste. The date required is the date of the investigation and the final date is the projected 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 \$2,000 TOTAL \$80

# Compliance History

|   |                                      |   |                   |
|---|--------------------------------------|---|-------------------|
| Customer/Respondent/Owner-Operator:           | CN600758197 Northeast Service, Inc.  | Classification: AVERAGE                   | Rating: 3.01      |
| Regulated Entity:                             | RN101463990 HORTON TREE SERVICE      | Classification: AVERAGE BY DEFAULT        | Site Rating: 3.01 |
| ID Number(s):                                 | AIR NEW SOURCE PERMITS               | ACCOUNT NUMBER                            | TA2693L           |
|   | MUNICIPAL SOLID WASTE NON PERMITTED  | ID NUMBER                                 | 455040168         |
| Location:                                     | 5100 GLENN CT, FORT WORTH, TX, 76140 | Rating Date: 9/1/2005 Repeat Violator: NO |                   |
| TCEQ Region:                                  | REGION 04 - DFW METROPLEX            |   |                   |
| Date Compliance History Prepared:             | August 11, 2006                      |   |                   |
| Agency Decision Requiring Compliance History: | Enforcement                          |   |                   |
| Compliance Period:                            | August 11, 2001 to August 11, 2006   |   |                   |

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

Name: Cari-Michel La Caille Phone: 512-239-1387

### 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.)  
N/A 1 08/03/2006 (481861)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
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

...the ... of ...

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
NORTHEAST SERVICE, INC. DBA  
HORTON TREE SERVICE  
RN101463990**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2006-1305-MLM-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 Northeast Service, Inc. dba Horton Tree Service ("Northeast") under the authority of the TEX. HEALTH & SAFETY CODE, chs. 361 and 382, and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Northeast appear before the Commission and together stipulate that:

1. Northeast owns and operates an unauthorized waste disposal site at 5100 Glenn Court in Fort Worth, Tarrant County, Texas (the "Site").
2. The Facility involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361 and consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and Northeast agree that the Commission has jurisdiction to enter this Agreed Order, and that Northeast is subject to the Commission's jurisdiction.
4. Northeast received notice of the violations alleged in Section II ("Allegations") on or about July 23, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Northeast of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Five Thousand Five Hundred Dollars (\$5,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Northeast has paid Four Thousand Four Hundred Dollars (\$4,400) of the administrative penalty and One Thousand One Hundred Dollars (\$1,100) is deferred contingent upon Northeast's timely and

low for the time being. The fact that the market is not yet fully open to competition is a major reason for this. The market is still dominated by a few large companies, and this is not in the best interests of consumers. The government should take steps to encourage more competition and to ensure that the market is open to all.

The government should also take steps to ensure that the market is open to all. This means that the government should take steps to ensure that the market is open to all. This means that the government should take steps to ensure that the market is open to all.

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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 Northeast fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Northeast 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 Northeast have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Northeast submitted to the TCEQ a corrective action plan on June 30, 2006 and actual remediation of the Site commenced on July 7, 2006.
10. 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 Northeast has not complied with one or more of the terms or conditions in this Agreed Order.
11. 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.
12. 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 Site, Northeast is alleged to have:

1. Failed to obtain proper TCEQ authorization to operate as a landfill facility, in violation of 30 TEX. ADMIN. CODE § 330.7(a), as documented during an investigation conducted on June 7, 2006.
2. Failed to obtain proper TCEQ authorization prior to the commencement of outdoor burning activities, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 7, 2006.

## III. DENIALS

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

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#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Northeast pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Northeast'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: Northeast Service, Inc. dba Horton Tree Service, Docket No. 2006-1305-MLM-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 Northeast shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, cease the receipt, storage, processing and/or disposal of waste at the Site until proper authorization is obtained;
  - b. Immediately upon the effective date of this Agreed Order, cease the unauthorized burning of waste at the Site;
  - c. Within 30 days after the effective date of this Agreed Order, remove any residual ash and/or debris that is a result of the June 7, 2006 burning activity from the Site and properly dispose of the waste at an authorized waste disposal facility and extinguish any on-going subsurface combustion of waste that may still exist; and
  - d. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 2.a., 2.b. and 2.c. as described below:

The certification shall, include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and 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 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  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon Northeast. Northeast is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If Northeast 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, Northeast's failure to comply is not a violation of this Agreed Order. Northeast shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Northeast shall notify the Executive Director within seven days after Northeast 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 Northeast shall be made in writing to the Executive Director. Extensions are not effective until Northeast 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 Northeast 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 Northeast, or three days after the date on which the Commission mails notice of the Order to Northeast, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

2/26/07  
\_\_\_\_\_  
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, if any, 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 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.

Homer Norton  
Signature

11/2/06  
Date

HOMER NORTON  
Name (Printed or typed)  
Authorized Representative of  
Northeast Service, Inc. dba Horton Tree Service

President  
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.

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
5800 S. DICKINSON DRIVE  
CHICAGO, ILLINOIS 60637  
TEL: 773-936-3700  
WWW.CHEM.UCHICAGO.EDU



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