EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1780-AIR-E **TCEQ ID:** RN101953206 **CASE NO.:** 31346

RESPONDENT NAME: Cross-Cut Hardwoods, Inc.

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:		
X 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
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Cross-Cut Hardwoods, west of Highway 69, two miles north of Alto, Cherokee County

TYPE OF OPERATION: Sawmill

SMALL BUSINESS: __X__ **Yes** ___ **No**

OTHER SIGNIFICANT MATTERS: A complaint was received on May 9, 2006, alleging that sawdust from the mill was accumulating on neighboring properties causing nuisance conditions. 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 March 26, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Terry Murphy, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-5025; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

Respondent: Mr. Pat McCown, Registered Agent, Cross-Cut Hardwoods, Inc., P.O. Box 518, Alto, Texas 75925
Mr. Randy McCown, President, Cross-Cut Hardwoods, Inc., P.O. Box 518, Alto, Texas 75925

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:** May 9, 2006 **Date of Investigation Relating to this Case:** May 11, 2006 **Date of NOE Relating to this Case:** August 31, 2006(NOE) **Background Facts:** This was a complaint investigation. Three violations were documented. **AIR** 1) Failed to apply for and obtain a New Source Review ("NSR") Permit as required for grandfathered facilities. Specifically, Cross-Cut did not apply for and obtain an NSR Permit as of the investigation date [30 TEX. ADMIN. CODE § 116.770 and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 2) Failed to prohibit the outdoor burning of materials. Specifically, Cross-Cut was observed burning wood debris outdoors [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 3) Failed to prevent a nuisance condition. Specifically, Cross-Cut failed to prevent the off-site discharge of sawdust to the adjacent property onto vegetation, canned foods, and counter-tops [30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and 382.085(b)].	**Total Assessed:** $7,500 **Total Deferred:** $1,500 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $6,000 **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	**Corrective Actions Taken:** 1) The Executive Director recognizes that Cross-Cut has implemented the following corrective measures at the Plant: a. On September 28, 2006, implemented procedures to stop all outdoor burning. b. On September 28, 2006, installed abatement equipment on the sawmill. **Ordering Provisions:** 2) The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, submit a permit application request, as described by 30 TEX. ADMIN. CODE § 116.110(a); and b. Within 270 days after the effective date of the Agreed Order, certify compliance with Commission rules regarding authorization to operate a source of air emissions under the New Source Review program or cease operations until appropriate authorization is obtained.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision April 25, 2006*

DATES					
Assigned	05-Sep-2006				
PCW	18-Oct-2006	Screening	25-Sep-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Cross-Cut Hardwoods, Inc.		
Reg. Ent. Ref. No.	RN101953206		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	31346	No. of Violations	3
Docket No.	2006-1780-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Jason Kemp
Multi-Media	No	EC's Team	Enforcement Team 5
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $7,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0% Enhancement *Subtotals 2, 3, & 7* $0

Notes: No change due to Average Performer classification.

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 a small x)*

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

Economic Benefit 0% Enhancement* *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$1,208
Approx. Cost of Compliance	$10,500

SUM OF SUBTOTALS 1-7 Final Subtotal $7,500

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 $7,500

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $7,500

DEFERRAL 20% Reduction Adjustment -$1,500

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 $6,000

Screening Date 25-Sep-2006 **Docket No.** 2006-1780-AIR-E **PCW**
Respondent Cross-Cut Hardwoods, Inc. *Policy Revision 2 (September 2002)*
Case ID No. 31346 *PCW Revision April 25, 2006*
Reg. Ent. Reference No. RN101953206
Media [Statute] Air Quality
Enf. Coordinator Jason Kemp

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%
		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) **0%**

>> **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 No change due to Average Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **0%**

Screening Date 25-Sep-2006 **Docket No.** 2006-1780-AIR-E **PCW**

Respondent Cross-Cut Hardwoods, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 31346 *PCW Revision April 25, 2006*

Reg. Ent. Reference No. RN101953206

Media [Statute] Air Quality

Enf. Coordinator Jason Kemp

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 116.770

Secondary Rule Cite(s) Tex. Health and Safety Code § 382.085(b)

Violation Description Failed to apply for a New Source Review ("NSR") Permit by September 1, 2003, as required for grandfathered facilities.

Base Penalty $10,000

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

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

OR

Percent

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events: 4 — 1120 Number of violation days

mark only one use a small x

daily	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty $4,000

Four annual events are recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $1,103

Statutory Limit Test

Violation Final Penalty Total $4,000

This violation Final Assessed Penalty (adjusted for limits) $4,000

Economic Benefit Worksheet

Respondent Cross-Cut Hardwoods, Inc.
Case ID No. 31346
Reg. Ent. Reference No. RN101953206
Media [Statute] Air Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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	$5,000	01-Sep-2003	28-Jan-2008	4.4	$1,103	n/a	$1,103
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs Estimated cost to obtain a New Source Review permit. Date Required is the date Cross-Cut was required to apply for a permit, qualify for a Permit By Rule, or submit a shutdown notice. Final Date is date of prospective 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 $5,000

TOTAL $1,103

Screening Date 25-Sep-2006 **Docket No.** 2006-1780-AIR-E **PCW**

Respondent Cross-Cut Hardwoods, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 31346 *PCW Revision April 25, 2006*

Reg. Ent. Reference No. RN101953206

Media [Statute] Air Quality

Enf. Coordinator Jason Kemp

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 111.201

Secondary Rule Cite(s) Tex. Health and Safety Code § 382.085(b)

Violation Description Failed to prohibit the outdoor burning of materials. Specifically, Cross-Cut was observed burning wood debris outdoors, as documented in an investigation conducted on May 11, 2006.

Base Penalty $10,000

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

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

OR

Percent 10%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

Percent

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

Adjustment -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events 1 — 1 Number of violation days

mark only one use a small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $10

Statutory Limit Test

Violation Final Penalty Total $1,000

This violation Final Assessed Penalty (adjusted for limits) $1,000

Economic Benefit Worksheet

Respondent Cross-Cut Hardwoods, Inc.
Case ID No. 31346
Reg. Ent. Reference No. RN101953206
Media [Statute] Air Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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	$500	11-May-2006	28-Sep-2006	0.4	$10	n/a	$10
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to cease outdoor burning. Date Required is the date of the investigation. Final Date is 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: $500

TOTAL $10

Screening Date 25-Sep-2006 **Docket No.** 2006-1780-AIR-E **PCW**

Respondent Cross-Cut Hardwoods, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 31346 *PCW Revision April 25, 2006*

Reg. Ent. Reference No. RN101953206

Media [Statute] Air Quality

Enf. Coordinator Jason Kemp

Violation Number 3

Primary Rule Cite(s) 30 Tex. Admin. Code § 101.4

Secondary Rule Cite(s) Tex. Health and Safety Code § 382.085(a) and 382.085(b)

Violation Description Failed to prevent a nuisance condition. Specifically, Cross-Cut failed to prevent the off-site discharge of sawdust to the adjacent property onto vegetation, canned foods, and counter-tops, as documented in an investigation conducted on May 11, 2006.

Base Penalty $10,000

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

Release	Harm: Major	Moderate	Minor
Actual		x	
Potential			

OR

Percent 25%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.

Adjustment -$7,500

Base Penalty Subtotal $2,500

Violation Events

Number of Violation Events 1 | 1 Number of violation days

mark only one use a small x	
daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $96

Statutory Limit Test

Violation Final Penalty Total $2,500

This violation Final Assessed Penalty (adjusted for limits) $2,500

Economic Benefit Worksheet

Respondent Cross-Cut Hardwoods, Inc.
Case ID No. 31346
Reg. Ent. Reference No. RN101953206
Media [Statute] Air Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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	$5,000	11-May-2006	28-Sep-2006	0.4	$96	n/a	$96
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to prevent nuisance condition. Date Required is the date of the investigation. Final Date is 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: $5,000

TOTAL $96

Compliance History

Customer/Respondent/Owner-Operator:	CN601685613	Cross-Cut Hardwoods, Inc.	Classification: AVERAGE BY DEFAULT 3.01
Regulated Entity:	RN101953206	CROSS-CUT HARDWOODS	Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER CJ0106K

Location: W OF US 69 2 MI N OF ALTO Rating Date: September 01 06
Repeat Violator: NO

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: October 10, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 10, 2001 to October 10, 2006

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

Name: Jason Kemp Phone: 512-239-5610

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? Yes
3. If Yes, who is the current owner? Cross-Cut Hardwoods, Inc.
4. if Yes, who was/were the prior owner(s)? Wingate Millworks Co
5. When did the change(s) in ownership occur? 07/15/2003

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

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
CROSS-CUT HARDWOODS, INC.	§	
RN101953206	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-1780-AIR-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 Cross-Cut Hardwoods, Inc. ("Cross-Cut") 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 Cross-Cut appear before the Commission and together stipulate that:

1. Cross-Cut owns and operates a sawmill located west of Highway 69, two miles north of Alto, Cherokee County, Texas (the "Plant").

2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

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

4. Cross-Cut received notice of the violations alleged in Section II ("Allegations") on or about September 5, 2006.

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

6. An administrative penalty in the amount of Seven Thousand Five Hundred Dollars ($7,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Cross-Cut has paid Six Thousand Dollars ($6,000) of the administrative penalty and One Thousand Five Hundred Dollars ($1,500) is deferred contingent upon Cross-Cut'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 Cross-Cut fails to timely and satisfactorily

comply with all requirements of this Agreed Order, the Executive Director may require Cross-Cut 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 Cross-Cut 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 Cross-Cut has implemented the following corrective measures at the Plant:

   a. On September 28, 2006, implemented procedures to stop all outdoor burning.

   b. On September 28, 2006, installed abatement equipment on the sawmill.

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 Cross-Cut 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 Plant, Cross-Cut is alleged to have:

1. Failed to apply for and obtain a New Source Review ("NSR") Permit as required for grandfathered facilities, in violation of 30 TEX. ADMIN. CODE § 116.770 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on May 11, 2006. Specifically, Cross-Cut did not apply for and obtain an NSR Permit as of the investigation date.

2. Failed to prohibit the outdoor burning of materials, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on May 11, 2006. Specifically, Cross-Cut was observed burning wood debris outdoors.

3. Failed to prevent a nuisance condition, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and 382.085(b), as documented during an investigation conducted on May 11, 2006. Specifically, Cross-Cut failed to prevent the off-site discharge of sawdust to the adjacent property onto vegetation, canned foods, and counter-tops.

III. DENIALS

Cross-Cut generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Cross-Cut pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Cross-Cut'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: Cross-Cut Hardwoods, Inc., Docket No. 2006-1780-AIR-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 Cross-Cut shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, submit a permit application request, as described by 30 TEX. ADMIN. CODE § 116.110(a) to:

      Air Permits Division, MC-163
      Texas Commission on Environmental Quality
      P. O. Box 13087
      Austin, Texas 78711-3087

   b. Within 270 days after the effective date of the Agreed Order, certify compliance with Commission rules regarding authorization to operate a source of air emissions under the New Source Review program or cease operations until appropriate authorization is obtained.

      The certification required by Ordering Provision No. 2.b. shall 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:

Manager
Air Section
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

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

4. If Cross-Cut 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, Cross-Cut's failure to comply is not a violation of this Agreed Order. Cross-Cut shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Cross-Cut shall notify the Executive Director within seven days after Cross-Cut 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 Cross-Cut shall be made in writing to the Executive Director. Extensions are not effective until Cross-Cut 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 Cross-Cut 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 Cross-Cut, or three days after the date on which the Commission mails notice of the Order to Cross-Cut, 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

_____ 4/26/07
For the Executive Director 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.

_____ 12/1/06
Signature Date

RANDY McCOWN _____ Pres.
Name (Printed or typed) Title
Authorized Representative of
Cross-Cut Hardwoods, Inc.

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.