

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1841-MLM-E TCEQ ID: RN104751177 CASE NO.: 34946

**RESPONDENT NAME: FOX TREE & LANDSCAPE NURSERY, INC. DBA MOTHER EARTH
LANDSCAPE MATERIALS**

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 3037 Farm-to-Market Road 665, Petronila, Nueces County</p> <p>TYPE OF OPERATION: Composting, brush recycling, concrete recycling, and sand and select fill mining operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 25, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492 TCEQ Regional Contact: Mr. Brad Genzer, Corpus Christ Regional Office, MC R-14, (361) 825-3106 Respondent: Mr. Daniel Caballero, President, Mother Earth Landscape Materials, 5949 La Costa, Corpus Christi, Texas 78413 Respondent's Attorney: Mr. J.D. Head, Attorney, Fritz, Byrne, Head & Harrison, LLP, 98 San Jacinto Boulevard, Suite 2000, Austin, Texas 78701-4288</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: August 16, 2007; September 13, 2007; October 8, 2007</p> <p>Date of NOE Relating to this Case: November 7, 2007</p> <p>Background Facts:</p> <p>The EDPRP was filed on December 10, 2007. The Respondent filed and Answer requesting a hearing on December 19, 2007. Settlement was achieved and a signed agreed order with full penalty payment was received on June 9, 2008.</p> <p>Current Compliance Status: Compliant.</p> <p>MLM:</p> <ol style="list-style-type: none"> 1. Failed to submit to the Executive Director at least 90 days prior to engaging in recycling activities a Notice of Intent ("NOI") to operate a recycling facility, and failed to submit a form or forms describing the types of materials being accepted for recycling, any storage of materials prior to recycling, how the materials will be recycled, and updates or changes to information contained in the facility report within 90 days of the effective date of the change [30 TEX. ADMIN. CODE §§ 328.5(b) and 330.11(e)]. 2. Failed to provide a written cost estimate showing the cost of hiring a third party to close the Facility [30 TEX. ADMIN. CODE § 328.5(c)(1)]. 3. Failed to establish and maintain financial assurance for closure of a municipal solid waste recycling facility [30 TEX. ADMIN. CODE §§ 328.5(d) and 37.921]. 	<p>Total Assessed: \$16,721</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid to General Revenue: \$16,721</p> <p>The Respondent has paid the administratively penalty in full.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures:</p> <ol style="list-style-type: none"> 1. Submitted a Notice of Intent to operate the recycling facility, along with forms describing the types of materials being accepted for recycling, any storage of materials prior to recycling, and how the materials will be recycled, on December 7, 2007. 2. Provided a written cost estimate showing the cost of hiring a third party to close the Facility, on February 14, 2008. 3. Obtained financial assurance for closure of the recycling facility on April 28, 2008. 4. Submitted a fire prevention and suppression plan on January 9, 2008. 5. Obtained authorization to discharge storm water on December 5, 2007 (TXR05W850). 6. Begun a program to ensure compliance with the conditions of the Standard Permit for a Tier II Portable Rock Crusher regarding the 1,800 hour operation limit. 7. Complied with the conditions of the Permit by Rule, Registration Number 76846 for the Soil Stabilization Plant, by covering the conveyor belts transferring dry material to the pug mill.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>4. Failed to have a fire prevention and suppression plan [30 TEX. ADMIN. CODE § 328.5(h)].</p> <p>5. Failed to obtain authorization to discharge storm water associated with an industrial activity through an individual permit or Multi-Sector General Permit [TEX. WATER CODE § 26.121(a)].</p> <p>6. Failed to comply with the conditions of the Standard Permit for a Tier II Portable Rock Crusher. Specifically, it was documented that the rock crusher exceeded the authorized limit of 1,080 hours of operation at the same site [30 TEX. ADMIN. CODE § 116.602 (a)(2)].</p> <p>7. Failed to comply with the conditions of the Permit by Rule, Registration Number 76846 for the Soil Stabilization Plant. Specifically, it was observed that one of the conveyor belts transferring dry material to the pug mill was not top covered [30 TEX. ADMIN. CODE § 106.146(2)].</p>		



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

DATES	Assigned	8-Nov-2007	Screening	8-Nov-2007	EPA Due	
	PCW	15-Nov-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape Materials
Reg. Ent. Ref. No.	RN104751177
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34946	No. of Violations	7
Docket No.	2007-1841-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Michael Meyer
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$13,000
---	-------------------	-----------------

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: There were no previous NOVs for the same or similar violations.

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 EDRP/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
--	-----------------	-------------------	------------

Total EB Amounts	\$4,426	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$21,794	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$13,000
-----------------------------	-----------------------	-----------------

OTHER FACTORS AS JUSTICE MAY REQUIRE	25%	Adjustment	\$3,721
---	-----	-------------------	----------------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommend an adjustment to capture the avoided cost associated with Violation No. 3.

Final Penalty Amount	\$16,721
-----------------------------	-----------------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$16,721
-----------------------------------	-------------------------------	-----------------

DEFERRAL	0% Reduction	Adjustment	\$0
-----------------	--------------	-------------------	------------

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

Notes: Deferral not offered.

PAYABLE PENALTY	\$16,721
------------------------	-----------------

Screening Date 8-Nov-2007

Docket No. 2007-1841-MLM-E

PCW

Respondent Fox Tree & Landscape Nursery, Inc. dba Mother Earth L:

Policy Revision 2 (September 2002)

Case ID No. 34946

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104751177

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

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 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%
<i>Please Enter Yes or No</i>			
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

There were no previous NOVs for the same or similar violations.

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

Screening Date 8-Nov-2007

Docket No. 2007-1841-MLM-E

PCW

Respondent Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscapi

Policy Revision 2 (September 2002)

Case ID No. 34946

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104751177

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 328.5(b) and 330.11(e)

Violation Description Failed to submit a Notice of Intent to operate a recycling facility to the Executive Director at least 90 days prior to engaging in recycling activities and to submit a form or forms describing the types of materials being accepted for recycling, any storage of materials prior to recycling, how the materials will be recycled and updates or changes to information contained in the facility report within 90 days of the effective date of the change, as documented during investigations conducted on August 16 and September 13, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (10%).

Matrix Notes 100 percent of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 84

Table with columns: Frequency (daily, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$1,000

One quarterly event is recommended from the August 16, 2007 investigation to the November 8, 2007 screening date.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$10 Violation Final Penalty Total \$1,286

This violation Final Assessed Penalty (adjusted for limits) \$1,286

Economic Benefit Worksheet

Respondent: Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape Materials
Case ID No.: 34946
Reg. Ent. Reference No.: RN104751177
Media: Water Quality
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
No commas or \$							

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)	\$250	16-Aug-2007	15-Jun-2008	0.8	\$10	n/a	\$10

Notes for DELAYED costs

Estimated cost to prepare and submit a Notice of Intent to operate a recycling operation. The Date Required is the August 16, 2007 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

\$250

TOTAL

\$10

Screening Date 8-Nov-2007

Docket No. 2007-1841-MLM-E

PCW

Respondent Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape

Policy Revision 2 (September 2002)

Case ID No. 34946

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104751177

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 328.5(c)(1)

Violation Description Failed to provide a written cost estimate showing the cost of hiring a third party to close the facility, as documented during investigations conducted on August 16 and September 13, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100 percent of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

84 Number of violation days

mark only one with an 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

Statutory Limit Test

Estimated EB Amount \$42

Violation Final Penalty Total \$1,286

This violation Final Assessed Penalty (adjusted for limits) \$1,286

Economic Benefit Worksheet

Respondent: Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape Materials
Case ID No.: 34946
Reg. Ent. Reference No.: RN104751177
Media: Water Quality
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
No commas or \$							

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	16-Aug-2007	15-Jun-2008	0.8	\$42	n/a	\$42

Notes for DELAYED costs

Estimated cost to prepare and submit a written cost estimate for closure of the Facility. The Date Required is the August 16, 2007 investigation and the Final Date is the estimated compliance date.

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

\$42

Screening Date 8-Nov-2007

Docket No. 2007-1841-MLM-E

PCW

Respondent Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape

Policy Revision 2 (September 2002)

Case ID No. 34946

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104751177

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number 3

Rule Cite(s)

30 Tex. Admin. §§ 328.5(d) and 37.921

Violation Description

Failed to establish and maintain financial assurance for closure of a municipal solid waste recycling facility, as documented during investigations conducted on August 16 and September 13, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100 percent of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	X
single event	

Violation Base Penalty \$1,000

One annual event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,721

Violation Final Penalty Total \$1,286

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent: Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape Materials
Case ID No.: 34946
Reg. Ent. Reference No.: RN104751177
Media: Water Quality
Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$3,544	16-Aug-2006	16-Aug-2007	1.0	\$177	\$3,544	\$3,721
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to obtain and maintain financial assurance based on the percent the bank is charging (1%) of the face value of the standby letter of credit for \$354,435. The Date Required is one year prior to the August 16, 2007 investigation date.

Approx. Cost of Compliance

\$3,544

TOTAL

\$3,721

Screening Date 8-Nov-2007

Docket No. 2007-1841-MLM-E

PCW

Respondent Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape

Policy Revision 2 (September 2002)

Case ID No. 34946

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104751177

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 328.5(h)

Violation Description Failed to have a fire prevention and suppression plan, as documented during investigations conducted on August 16 and September 13, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3 84 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
single event		

Violation Base Penalty \$7,500

Three monthly events are recommended from the August 16, 2007 investigation date to the November 8, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$416

Violation Final Penalty Total \$9,647

This violation Final Assessed Penalty (adjusted for limits) \$9,647

Economic Benefit Worksheet

Respondent: Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape Materials
Case ID No.: 34946
Reg. Ent. Reference No.: RN104751177
Media: Water Quality
Violation No.: 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

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)	\$10,000	16-Aug-2007	15-Jun-2008	0.8	\$416	n/a	\$416

Notes for DELAYED costs

Estimated cost to develop a fire suppression plan. The Date Required is the August 16, 2007 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

\$10,000

TOTAL

\$416

Screening Date 8-Nov-2007

Docket No. 2007-1841-MLM-E

PCW

Respondent Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape

Policy Revision 2 (September 2002)

Case ID No. 34946

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104751177

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number 5

Rule Cite(s) Tex. Water Code § 26.121(a)

Violation Description Failed to obtain authorization to discharge storm water associated with an industrial activity through an individual permit or Multi-Sector General Permit, as documented during an investigation conducted on October 8, 2007

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes 100 percent of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 31

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 October 8, 2007 investigation to the November 8, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$50

Violation Final Penalty Total \$1,286

This violation Final Assessed Penalty (adjusted for limits) \$1,286

Economic Benefit Worksheet

Respondent: Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape Materials
Case ID No.: 34946
Reg. Ent. Reference No.: RN104751177
Media: Water Quality
Violation No.: 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

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	\$2,500	08 Oct-2007	15-Aug-2008	0.4	\$50	n/a	\$50
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a permit application to discharge water from the sand mining pit. The Date Required is the date of the October 8, 2007 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

\$2,500

TOTAL

\$50

Screening Date 8-Nov-2007

Docket No. 2007-1841-MLM-E

PCW

Respondent Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape

Policy Revision 2 (September 2002)

Case ID No. 34946

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104751177

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 116.602 (a)(2)

Violation Description

Failed to comply with the conditions of the Standard Permit for a Tier II Portable Rock Crusher, as documented during an investigation conducted on October 8, 2007. Specifically, it was documented that the rock crusher exceeded the authorized limit of 1,080 hours of operation at the same site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100 percent of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

1

365

Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$1,000

One annual event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$88

Violation Final Penalty Total \$1,286

This violation Final Assessed Penalty (adjusted for limits) \$1,286

Economic Benefit Worksheet

Respondent Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape Materials
Case ID No. 34946
Reg. Ent. Reference No. RN104751177
Media Water Quality
Violation No. 7

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	\$2,500	08 Oct-2007	15 Oct-2008	0.7	\$88	n/a	\$88
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a permit to operate a Tier II Portable Rock Crusher. The Date Required is the October 8, 2007 investigation and the Final Date is the estimated compliance date.

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

\$2,500

TOTAL

\$88

Screening Date 8-Nov-2007

Docket No. 2007-1841-MLM-E

PCW

Respondent Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape

Policy Revision 2 (September 2002)

Case ID No. 34946

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104751177

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 106.146(2)

Violation Description

Failed to comply with the conditions of the Permit by Rule, Registration Number 76846 for the Soil Stabilization Plant, as documented during an investigation conducted on October 8, 2007. Specifically, it was observed that one of the conveyor belts transferring dry material to the pug mill was not top covered.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

1

31 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$99

Violation Final Penalty Total \$643

This violation Final Assessed Penalty (adjusted for limits) \$643

Economic Benefit Worksheet

Respondent: Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape Materials
Case ID No.: 34946
Reg. Ent. Reference No.: RN104751177
Media: Water Quality
Violation No.: 8

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$2,000	1-Oct-2007	15-Jun-2008	0.7	\$5	\$94	\$99
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to provide a top cover for the exposed conveyor belt of the Soil Stabilization Plant. The Date Required is the October 8, 2007 investigation and the Final Date is the estimated compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 \$99

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
FOX TREE & LANDSCAPE
NURSERY, INC. DBA MOTHER
EARTH LANDSCAPE MATERIALS
RN104751177

§
§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-1841-MLM-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape Materials ("Fox Tree & Landscape") under the authority of TEX. WATER CODE chs. 7 and 26, and TEX. HEALTH & SAFETY CODE chs. 361 and 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Fox Tree & Landscape, represented by J.D. Head of the law firm Fritz, Byrne, Head & Harrison, LLP, appear before the Commission and together stipulate that:

1. Fox Tree & Landscape owns and operates a composting, brush recycling, concrete recycling, and sand and select fill mining operation located at 3037 Farm-to-Market Road 665, Petronila, Nueces County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and TCEQ rules.
3. The Commission and Fox Tree & Landscape agree that the Commission has jurisdiction to enter this Agreed Order, and that Fox Tree & Landscape is subject to the Commission's jurisdiction.
4. Fox Tree & Landscape received notice of the violations alleged in Section II ("Allegations") on or about November 12, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Fox Tree & Landscape of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of eighteen thousand seven hundred twenty-one dollars (\$18,721.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Fox Tree & Landscape has paid eighteen thousand seven hundred twenty-one dollars (\$18,721.00) of the administrative 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 Fox Tree & Landscape 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 Fox Tree & Landscape has implemented the following corrective measures at the Facility:
 - a. Submitted a Notice of Intent to operate the recycling facility, along with forms describing the types of materials being accepted for recycling, any storage of materials prior to recycling, and how the materials will be recycled, on December 7, 2007;
 - b. Provided a written cost estimate showing the cost of hiring a third party to close the Facility, on February 14, 2008;
 - c. Obtained financial assurance for closure of the recycling Facility, on April 28, 2008;
 - d. Submitted a fire prevention and suppression plan on January 9, 2008;
 - e. Obtained authorization to discharge storm water on December 5, 2007 (TXR05W850);
 - f. Begun a program to ensure compliance with the conditions of the Standard Permit for a Tier II Portable Rock Crusher regarding the 1,800 hour operation limit; and
 - g. Complied with the conditions of the Permit by Rule, Registration Number 76846 for the Soil Stabilization Plant, by covering the conveyor belts transferring dry material to the pug mill.
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 Fox Tree & Landscape 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

1. Fox Tree & Landscape is alleged to have violated:
 - a. 30 TEX. ADMIN. CODE §§ 328.5(b) and 330.11(e), by failing to submit to the Executive Director at least 90 days prior to engaging in recycling activities a Notice of Intent ("NOI") to operate a recycling facility, and failing to submit a form or forms describing the types of materials being accepted for recycling, any storage of materials prior to recycling, how the materials will be recycled, and updates or changes to information contained in the facility report within 90 days of the effective date of the change;
 - b. 30 TEX. ADMIN. CODE § 328.5(c)(1), by failing to provide a written cost estimate showing the cost of hiring a third party to close the facility;
 - c. 30 TEX. ADMIN. CODE §§ 328.5(d) and 37.921, by failing to establish and maintain financial assurance for closure of a municipal solid waste recycling facility;
 - d. 30 TEX. ADMIN. CODE § 328.5(h), by failing to have a fire prevention and suppression plan;
 - e. TEX. WATER CODE § 26.121(a), by failing to obtain authorization to discharge storm water associated with an industrial activity through an individual permit or Multi-Sector General Permit;
 - f. 30 TEX. ADMIN. CODE § 116.602 (a)(2), by failing to comply with the conditions of the Standard Permit for a Tier II Portable Rock Crusher. Specifically, it was documented that the rock crusher exceeded the authorized limit of 1,080 hours of operation at the same site; and

- g. 30 TEX. ADMIN. CODE § 106.146(2), by failing to comply with the conditions of the Permit by Rule, Registration Number 76846 for the Soil Stabilization Plant. Specifically, it was observed that one of the conveyor belts transferring dry material to the pug mill was not top covered.

III. DENIALS

1. Fox Tree & Landscape generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Fox Tree & Landscape pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Fox Tree & Landscape'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 considering or requiring corrective action or penalties for violations which are not raised here.
2. The provisions of this Agreed Order shall apply to and be binding upon Fox Tree & Landscape.
3. This Agreed Order, issued by the Commission, shall not be admissible against Fox Tree & Landscape 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.
4. 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.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Fox Tree & Landscape, or three days after the date on which the Commission mails notice of the Order to Fox Tree & Landscape, 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



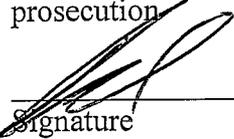
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that 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.

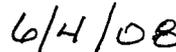
I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or Fox Tree & Landscape's failure to timely pay the penalty amount, may result in:

- A negative impact on Fox Tree & Landscape's compliance history;
- Greater scrutiny of any permit applications submitted by Fox Tree & Landscape;
- 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 Fox Tree & Landscape;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Fox Tree & Landscape; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution



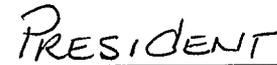
Signature



Date



Name (Printed or typed)



Title

Authorized representative of

Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape Materials