

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1753-MSW-E TCEQ ID: RN103719795 CASE NO.: 34876
RESPONDENT NAME: H. MITCHELL ENTERPRISES, INC.
DBA DIRT-TECH CONSTRUCTION & EXCAVATION

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 type="checkbox"/> AIR	<input 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 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: 7070 Hudson Cemetery, Kennedale, Tarrant County</p> <p>TYPE OF OPERATION: Sand, gravel, and mulching facility</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 location.</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 June 9, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p>TCEQ Attorney: Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p>TCEQ Enforcement Coordinator: Mr. Clinton Sims, Waste Enforcement Section, MC 169, (512) 239-6933</p> <p>TCEQ Regional Contact: Mr. Samuel L. Barrett, DFW Regional Office, MC R-4, (817) 588-5903</p> <p>Respondent: Mr. Harrell Mitchell, President, H. Mitchell Enterprises, Inc., 7333 La Cantera Drive, Fort Worth, Texas 76108</p> <p>Respondent's Attorney: Mr. Chris Pepper, Attorney, Jackson Walker, L.L.P., 100 Congress Avenue, Suite 1100, Austin, Texas 78701</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 Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: July 31, 2007</p> <p>Date of NOE Relating to this Case: September 13, 2007</p> <p>Background Facts:</p> <p>An EDPRP was filed on November 20, 2007. The Respondent filed an answer on December 11, 2007. The case was referred to SOAH on January 14, 2008. An Agreed Order was signed by the Respondent on April 10, 2008. A Motion to Remand was filed and granted on April 11, 2008.</p> <p>MSW</p> <ol style="list-style-type: none"> 1. Failed to submit a Notice of Intent (NOI) for recycling operations within 90 days prior to the commencement of operations [30 TEX. ADMIN. CODE § 328.5(b)]. 2. Failed to submit a written closure cost estimate to the TCEQ [30 TEX. ADMIN. CODE § 328.5(c)]. 3. Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible materials [30 TEX. ADMIN. CODE § 328.5(d)]. 4. Failed to maintain records [30 TEX. ADMIN. CODE § 328.5(f)]. 5. Failed to have a fire prevention and suppression plan [30 TEX. ADMIN. CODE § 328.5(h)]. 	<p>Total Assessed: \$8,942</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: \$8,942</p> <p>The Respondent has paid the administrative 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>1. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility in response to this enforcement action:</p> <ol style="list-style-type: none"> a. Submitted a NOI for recycling operations; b. Submitted a written closure cost estimate; and c. Established financial assurance for the closure of the recycling facility. <p>Technical Requirements</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days, <ol style="list-style-type: none"> a. Develop a fire prevention plan and make it available to local fire officials; b. Submit documentation that at least 50% by weight or volume of the material accumulated at the Facility for recycling is recycled or transferred to a different site for recycling; and c. In lieu of 1 through 2 above, remove all accumulated materials and dispose at an authorized facility. 2. Within 45 days, submit written, notarized certification demonstrate compliance with these Ordering Provisions.

VIOLATION SUMMARY CHART:

**RESPONDENT NAME: H. MITCHELL ENTERPRISES, INC.
DBA DIRT-TECH CONSTRUCTION & EXCAVATION
DOCKET NO.: 2007-1753-MSW-E**

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
6. Failed to recycle or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six month period [30 TEX. ADMIN. CODE § 328.4(b)(3)].		



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision, September 19, 2007

TCEQ

DATES	Assigned	24-Sep-2007			
	PCW	30-Oct-2007	Screening	29-Oct-2007	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavation
Reg. Ent. Ref. No.	RN103719795
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34876	No. of Violations	6
Docket No.	2007-1753-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Clinton Sims
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)	<i>Subtotal 1</i>	\$7,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	2% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$150
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Notes: The Respondent received one NOV without same or similar violations.

Culpability	No	0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	<i>Subtotal 5</i>	\$0
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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	<i>Subtotal 6</i>	\$0
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Total EB Amounts	\$2,457	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$25,642	

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$7,650
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OTHER FACTORS AS JUSTICE MAY REQUIRE	17%	<i>Adjustment</i>	\$1,292
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended adjustment to capture the avoided cost benefit associated with Violation Number 3.

<i>Final Penalty Amount</i>	\$8,942
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$8,942
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DEFERRAL	0% Reduction	<i>Adjustment</i>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only, e.g. 20 for 20% reduction.)

Notes: Deferral not offered for direct referral to Litigation Division.

PAYABLE PENALTY	\$8,942
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Screening Date 29-Oct-2007

Docket No. 2007-1753-MSW-E

PCW

Respondent H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction &

Policy Revision 2 (September 2002)

Case ID No. 34876

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN103719795

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

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	1	2%
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) 2%

>> 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

The Respondent received one NOV without same or similar violations.

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

Screening Date 29-Oct-2007 **Docket No.** 2007-1753-MSW-E **PCW**
Respondent H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excava *Policy Revision 2 (September 2002)*
Case ID No. 34876 *PCW Revision September 19, 2007*
Reg. Ent. Reference No. RN103719795
Media [Statute] Municipal Solid Waste
Enf. Coordinator Clinton Sims
Violation Number
Rule Cite(s)
Violation Description Failed to submit a Notice of Intent (NOI) for recycling operations within 90 days prior to the commencement of operations. Specifically, the Respondent did not submit a NOI prior to beginning wood recycling operations.
Base Penalty

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days
mark only one with an x
 daily
 monthly
 quarterly
 semiannual
 annual
 single event

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$5"/>	Violation Final Penalty Total <input type="text" value="\$1,192"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,192"/>	

Economic Benefit Worksheet

Respondent H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavation
 Case ID No. 34876
 Reg. Ent. Reference No. RN103719795
 Media: 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
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)	\$100	31-Jul-2007	26-Jun-2008	0.9	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to submit a Notice of Intent (NOI). The Date Required is the investigation date and the Final Date is the expected 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

\$100

TOTAL

\$5

Screening Date 29-Oct-2007	Docket No. 2007-1753-MSW-E	PCW
Respondent H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavati	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34876	<i>PCW Revision September 19, 2007</i>	
Reg. Ent. Reference No. RN103719795		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Clinton Sims		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 328.5(c)"/>	
Violation Description	<input type="text" value="Failed to submit a written closure cost estimate to the TCEQ. Specifically, the Respondent did not obtain closure cost estimates prior to beginning operations."/>	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
		Major	Moderate		Minor
	Release	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="0%"/>	

>> Programmatic Matrix

	Major	Moderate	Minor	
Falsification	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="10%"/>
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>			

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text" value="x"/>	

Violation Base Penalty

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 H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavation
 Case ID No. 34876
 Reg. Ent. Reference No. RN103719795
 Media 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
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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	31-Jul-2007	25-Jun-2008	0.9	\$11	n/a	\$11

Notes for DELAYED costs

Estimated cost to obtain a closure cost estimate. The Date Required is the investigation date and the Final Date is the expected 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

\$11

Screening Date 29-Oct-2007	Docket No. 2007-1753-MSW-E	PCW
Respondent H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavati	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 34876	<small>PCW Revision September 19, 2007</small>	
Reg. Ent. Reference No. RN103719795		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Clinton Sims		
Violation Number <input type="text" value="3"/>		
Rule Cite(s)	30 Tex. Admin. Code § 328.5(d)	
Violation Description	Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible materials (brush, tree trimmings, clean lumber, and mulch) outdoors. Specifically, the Respondent did not have financial assurance at the time of the investigation.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>

>> Programmatic Matrix

	Falsification				
		Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	
	Matrix Notes	100% of the rule requirement was not met.			Percent <input type="text" value="10%"/>
Adjustment					<input type="text" value="\$9,000"/>

Violation Events

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="90"/> Number of violation days	
<small>mark only one with an x</small>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input checked="" type="checkbox"/>
	single event	<input type="text"/>
<input type="text" value="One annual event is recommended."/>		Violation Base Penalty <input type="text" value="\$1,000"/>

Economic Benefit (EB) for this violation	Statutory/Limit Test
Estimated EB Amount <input type="text" value="\$1,357"/>	Violation Final Penalty Total <input type="text" value="\$1,192"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,192"/>	

Economic Benefit Worksheet

Respondent H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavation
 Case ID No. 34876
 Reg. Ent. Reference No. RN103719795.
 Media: Municipal Solid Waste
 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
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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)				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)

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]	\$1,292	31-Jul-2006	31-Jul-2007	1.0	\$65	\$1,292	\$1,357
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Cost of obtaining financial assurance for the facility. The Date Required is the beginning date of the violation and the Final Date is the end date of the violation.

Approx. Cost of Compliance

\$1,292

TOTAL

\$1,357

Screening Date 29-Oct-2007	Docket No. 2007-1753-MSW-E	PCW
Respondent H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavati	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34876	<i>PCW Revision September 19, 2007</i>	
Reg. Ent. Reference No. RN103719795		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Clinton Sims		
Violation Number	4	
Rule Cite(s)	30 Tex. Admin. Code § 328.5(f)	
Violation Description	Failed to maintain records. Specifically, the Respondent did not keep any records documenting compliance with limitations on storage of recyclable materials (brush, tree trimmings, clean lumber, and mulch) and reasonable efforts to maintain source-separation of materials received by the facility.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="0%"/>	

>> Programmatic Matrix

	Falsification			
	Major	Moderate	Minor	
	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.			

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text" value="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 H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavation
 Case ID No. 34876
 Reg. Ent. Reference No. RN103719795
 Media Municipal Solid Waste
 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	\$500	31-Jul-2007	25-Jun-2008	0.9	\$23	n/a	\$23
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 maintain records to show compliance with to show limitations on storage of recyclable materials. The Date Required is the investigation date and the Final Date is the expected 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

\$23

Screening Date 29-Oct-2007	Docket No. 2007-1753-MSW-E	PCW
Respondent H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavati	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34876	<i>PCW Revision September 19, 2007</i>	
Reg. Ent. Reference No. RN103719795		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Clinton Sims		
Violation Number	5	
Rule Cite(s)	30 Tex. Admin. Code § 328.5(h)	
Violation Description	Failed to have a fire prevention and suppression plan. Specifically, the Respondent managed combustible materials (brush, tree trimmings, clean lumber, and mulch) and did not have a fire prevention and suppression plan at the time of the investigation.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Major	Moderate	Minor		
	Actual	Potential	Actual	Potential	Percent
	x				25%

>> Programmatic Matrix

	Major	Moderate	Minor	
Falsification				Percent
				0%
Matrix Notes	Human health or the environment will or could be exposed to significant amounts of pollutants which would exceed protective levels.			
Adjustment				\$7,500

\$2,500

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	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 <input type="text" value="\$452"/>	Violation Final Penalty Total <input type="text" value="\$2,981"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,981"/>	

Economic Benefit Worksheet

Respondent: H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavation

Case ID No.: 34876

Reg. Ent. Reference No.: RN103719795

Media: Municipal Solid Waste

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
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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	31-Jul-2007	25-Jun-2008	0.9	\$452	n/a	\$452

Notes for DELAYED costs

Estimated cost to draft a site specific fire prevention and suppression plan. The Date Required is the investigation date and the Final Date is the expected 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

\$452

Screening Date 29-Oct-2007	Docket No. 2007-1753-MSW-E	PCW
Respondent H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavati	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34876	<i>PCW Revision September 19, 2007</i>	
Reg. Ent. Reference No. RN103719795		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Clinton Sims		
Violation Number <input type="text" value="6"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 328.4(b)(3)"/>	
Violation Description	Failed to recycle or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six month period. Specifically, the Respondent was unable to demonstrate that they met the required recycling turnover rate at the time of the investigation.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
Potential	<input type="text"/>	x	<input type="text"/>	Percent <input type="text" value="10%"/>	

>> Programmatic Matrix

	Falsification				
		Major	Moderate		Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>		<input type="text"/>
Matrix Notes	Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed protective levels.				
Adjustment				<input type="text" value="\$9,000"/>	

	<input type="text" value="\$1,000"/>
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Violation Events

Number of Violation Events	<input type="text" value="1"/>		<input type="text" value="90"/>	Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	x		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
single event	<input type="text"/>			
One quarterly event is recommended from the July 31, 2007 investigation date to the October 29, 2007 screening date.				
Violation Base Penalty				<input type="text" value="\$1,000"/>

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$610"/>	Violation Final Penalty Total <input type="text" value="\$1,192"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,192"/>	

Economic Benefit Worksheet

Respondent: H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavation
Case ID No.: 34876
Reg. Ent. Reference No.: RN103719795
Media: Municipal Solid Waste
Violation No.: 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Item Description: 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)	\$13,500	31-Jul-2007	25-Jun-2008	0.9	\$610	n/a	\$610

Notes for DELAYED costs: Estimated cost to recycle or transfer to a different site for recycling at least 50% by weight or volume of material accumulated. The Date Required is the investigation date and the Final Date is the expected 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	\$13,500	TOTAL	\$610
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Compliance History

Customer/Respondent/Owner-Operator:	CN601472962	H. Mitchell Enterprises, Inc	Classification: AVERAGE	Rating: 2.12
Regulated Entity:	RN103719795	DIRT-TECH CONSTRUCTION AND EXCAVATION	Classification: AVERAGE	Site Rating: 2.00
<hr/>				
ID Number(s):				
Location:	7070 HUDSON CEMETERY, KENNEDALE, TX, 76060		Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	October 19, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 19, 2002 to October 19, 2008			
<hr/>				
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Clinton Sims	Phone:	(512) 239-6933	

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	06/23/2004	(275906)
2	12/20/2004	(344816)
3	09/18/2007	(572700)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	06/29/2004	(275906)	
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)		
Rqmt Prov:	PERMIT TXR050000		
Description:	Failure to conduct hazardous metals monitoring in 2003.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)		
Rqmt Prov:	PERMIT TXR050000		
Description:	Failure to monitor discharges from mine dewatering operations for numeric effluent limitations regarding TSS and pH at least once per year.		
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
H. MITCHELL ENTERPRISES,
INC. DBA DIRT-TECH
CONSTRUCTION & EXCAVATION
RN103719795

§
§
§
§
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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-1753-MSW-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 H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavation (“H. Mitchell Enterprises”) under the authority of TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and 30 TEX. ADMIN. CODE ch. 328. The Executive Director of the TCEQ, represented by the Litigation Division, and H. Mitchell Enterprises, represented by Chris Pepper of Jackson Walker, L.L.P., appear before the Commission and together stipulate that:

1. H. Mitchell Enterprises owns and operates a sand, gravel, and mulching operation located at 7070 Hudson Cemetery, Kennedale, Tarrant 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. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Commission and H. Mitchell Enterprises agree that the Commission has jurisdiction to enter this Agreed Order, and that H. Mitchell Enterprises is subject to the Commission’s jurisdiction.
4. H. Mitchell Enterprises received notice of the violations alleged in Section II (“Allegations”) on or about September 18, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by H. Mitchell Enterprises of any violation alleged in Section II (“Allegations”), nor of any statute or rule.

6. An administrative penalty in the amount of eight thousand nine hundred forty-two dollars (\$8,942.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). H. Mitchell Enterprises has paid eight thousand nine hundred forty-two dollars (\$8,942.00) 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 H. Mitchell Enterprises 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 H. Mitchell Enterprises has implemented the following corrective measures at the Facility in response to this enforcement action:
 - a. Submitted a Notice Of Intent (NOI) for recycling operations;
 - b. Submitted a written closure cost estimate; and
 - c. Established financial assurance for the closure of the recycling facility.
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 H. Mitchell Enterprises 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. H. Mitchell Enterprises is alleged to have violated:
 - a. 30 TEX. ADMIN. CODE § 328.5(b) by failing to submit a NOI for recycling operations within 90 days prior to the commencement of operations, as documented on July 31, 2007. Specifically, the Respondent did not submit a NOI prior to beginning wood recycling operations;

- b. 30 TEX. ADMIN. CODE § 328.5(c) by failing to submit a written closure cost estimate to the TCEQ, as documented on July 31, 2007. Specifically, the Respondent did not obtain closure cost estimates prior to beginning operations;
- c. 30 TEX. ADMIN. CODE § 328.5(d) by failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible materials (brush, tree trimmings, clean lumber, and mulch) outdoors, as documented on July 31, 2007. Specifically, the Respondent did not have financial assurance at the time of the investigation;
- d. 30 TEX. ADMIN. CODE § 328.5(f) by failing to maintain records, as documented on July 31, 2007. Specifically, the Respondent did not keep any records documenting compliance with limitations on storage of recyclable materials (brush, tree trimmings, clean lumber, and mulch) and reasonable efforts to maintain source-separation of materials received by the facility;
- e. 30 TEX. ADMIN. CODE § 328.5(h) by failing to have a fire prevention and suppression plan, as documented on July 31, 2007. Specifically, the Respondent managed combustible materials (brush, tree trimmings, clean lumber, and mulch) and did not have a fire prevention and suppression plan at the time of the investigation; and
- f. 30 TEX. ADMIN. CODE § 328.4(b)(3) by failing to recycle or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six month period, as documented on July 31, 2007. Specifically, the Respondent was unable to demonstrate that they meet the recycling turnover rate at the time of the investigation.

III. DENIALS

H. Mitchell Enterprises generally denies each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that H. Mitchell Enterprises pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and H. Mitchell Enterprises’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. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavation, Docket No. 2007-1753-MSW-E” to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. H. Mitchell Enterprises shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, H. Mitchell Enterprises shall:
 - i. Develop a fire prevention plan and make it available to local fire officials, in accordance with 30 TEX. ADMIN. CODE § 328.5(h);
 - ii. Submit documentation that at least 50% by weight or volume of the material accumulated at the Facility for recycling is recycled or transferred to a different site for recycling, in accordance with 30 TEX. ADMIN. CODE § 328.4(b)(3) and 328.5(f)(1); or
 - iii. In lieu of 2.a.i through 2.a.ii, remove all accumulated materials and dispose at an authorized facility.
 - b. Within 45 days after the effective date of this Order, H. Mitchell Enterprises shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a.i through 2.a.ii or 2.a.iii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that 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.”

H. Mitchell Enterprises shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a.i through 2.a.iii to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Samuel L. Barrett, Waste Section Manager
Dallas / Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Road
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon H. Mitchell Enterprises. H. Mitchell Enterprises is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If H. Mitchell Enterprises 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, H. Mitchell Enterprises's failure to comply is not a violation of this Agreed Order. H. Mitchell Enterprises shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. H. Mitchell Enterprises shall notify the Executive Director within seven days after H. Mitchell Enterprises 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 H. Mitchell Enterprises shall be made in writing to the Executive Director. Extensions are not effective until H. Mitchell Enterprises 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 H. Mitchell Enterprises 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) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to H. Mitchell Enterprises, or three days after the date on which the Commission mails notice of the Order to H. Mitchell Enterprises, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavation
DOCKET NO. 2007-1753-MSW-E
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]
For the Executive Director

5/28/07
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 H. Mitchell Enterprises's failure to timely pay the penalty amount, may result in:

- A negative impact on H. Mitchell Enterprises's compliance history;
- Greater scrutiny of any permit applications submitted by H. Mitchell Enterprises;
- 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 H. Mitchell Enterprises;
- Automatic referral to the Attorney General's Office of any future enforcement actions against H. Mitchell Enterprises; 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]
Signature

4/10/2008
Date

Jennifer Mitchell
Name (Printed or typed)

Corporate Secretary
Title

Authorized representative of
H. Mitchell Enterprises, Inc. dba Dirt-Tech Construction & Excavation