

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0459-WQ-E **TCEQ ID:** RN103777488 **CASE NO.:** 37328

RESPONDENT NAME: EL MODENO GARDENS, INC., P&E Groot Family Trust, and SEVILLE FARMS, INC.

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 checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: El Modeno Gardens Smith County Texas Site, located on the south side of County Road 313 East, approximately 0.4 mile west of the intersection of County Road 313 and Farm-to-Market Road 2015 North, Smith County</p> <p>TYPE OF OPERATION: Nursery</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received August 19, 2008, alleging that sediment discharged from the Respondents' property had completely filled in a pond and created a large sediment bar in Driscoll Lake. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on September 21, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Steve Villatoro, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4930; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Peter Groot, Director, EL MODENO GARDENS, INC., P&E Groot Family Trust, and SEVILLE FARMS, INC., 11911 Jeffrey Road, Irvine, California 92602 Ms. JoAnne Newton, Vice President, EL MODENO GARDENS, INC. and Representative of P&E Groot Family Trust, 11911 Jeffrey Road, Irvine, California 92602 Mr. William A. Brentlinger, President, SEVILLE FARMS, INC., 8803 Levi County Line Road, Mansfield, Texas 76063 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

DOCKET NO.: 2009-0459-WQ-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: August 19, 2008</p> <p>Date of Investigation Relating to this Case: September 30, 2008 and January 12, 2009</p> <p>Date of NOV/NOE Relating to this Case: February 18, 2009 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>Failure to prevent the unauthorized discharge of sediment into or adjacent to water in the state. Specifically, the investigator observed significant sediment deposits in the creek, which discharged from denuded soil around and under the greenhouses located to the west of the Site's driveway. Furthermore, the ground to the south of the greenhouses was completely bare and unstabilized. A spring fed creek originates on the nursery property and discharges into an unnamed pond then to Driscoll Lake. The investigator measured sediment deposits covering an area approximately 12,000 square feet in the pond and 9,000 square feet in Driscoll Lake [TEX. WATER CODE § 26.121(a)(1)].</p>	<p>Total Assessed: \$12,500</p> <p>Total Deferred: \$2,500 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$10,000</p> <p>CN602298267, CN603442096, CN603473703 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>Ordering Provisions:</p> <p>The Order will require the Respondents to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, ensure that final stabilization of the Site south and west of the greenhouses has been established by having a uniform, evenly distributed perennial vegetative covering of at least 70% of the native background vegetative cover for the area on all unpaved areas and areas not covered by permanent structures;</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a;</p> <p>c. Within 60 days after the effective date of this Agreed Order, remove visible accumulations of sediment from the unnamed tributary leading from the culvert under Nursery Drive, the unnamed pond, and Driscoll Lake and submit a written statement that the sediment material was removed and relocated or disposed of at a TCEQ authorized location, including a description of the specific location where the sediment was taken, the amount of material transported, and method of sediment removal; and</p> <p>d. Within 75 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision c. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a and c.</p>

Additional ID No(s):N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	17-Feb-2009	Screening	24-Feb-2009	EPA Due	
	PCW	23-Mar-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	EL MODENO GARDENS, INC., P&E Groot Family Trust, and SEVILLE FARMS, INC.
Reg. Ent. Ref. No.	RN103777488
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37328	No. of Violations	1
Docket No.	2009-0459-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steve Villatoro
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 1
Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **\$12,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0.0% Enhancement *Subtotals 2, 3, & 7* **\$0**

Notes: No enhancement is recommended based on average performer classification.

Culpability No 0.0% Enhancement *Subtotal 4* **\$0**

Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments *Subtotal 5* **\$0**

Economic Benefit 0.0% Enhancement* *Subtotal 6* **\$0**

Total EB Amounts	\$6,260
Approx. Cost of Compliance	\$100,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 *Final Subtotal* **\$12,500**

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% *Adjustment* **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$12,500**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **\$12,500**

DEFERRAL 20.0% Reduction *Adjustment* **-\$2,500**

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

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$10,000**

Screening Date 24-Feb-2009

Docket No. 2009-0459-WQ-E

PCW

Respondent EL MODENO GARDENS, INC., P&E Groot Family Trust,

Policy Revision 2 (September 2002)

Case ID No. 37328

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103777488

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

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

No enhancement is recommended based on average performer classification.

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

Screening Date: 24-Feb-2009 **Docket No.:** 2009-0459-WQ-E **PCW**
Respondent: EL MODENO GARDENS, INC., P&E Groot Family Trust, and SEVILLE FARMS, INC. *Policy Revision 2 (September 2002)*
Case ID No.: 37328 *PCW Revision October 30, 2008*
Reg. Ent. Reference No.: RN103777488
Media (Statute): Water Quality
Enf. Coordinator: Steve Villatoro

Violation Number:
Rule Cite(s):
Violation Description: Failed to prevent an unauthorized discharge of a sediment into or adjacent to water in the state, as documented during investigations conducted on September 30, 2008 and January 12, 2009. Specifically, the investigator observed significant sediment deposits in the creek, which discharged from denuded soil around and under the greenhouses located to the west of the Site's driveway. Furthermore, the ground to the south of the greenhouses was completely bare and unstabilized. A spring fed creek originates on the nursery property and discharges into an unnamed pond then to Driscoll Lake. The investigator measured sediment deposits covering an area approximately 12,000 square feet in the pond and 9,000 square feet in Driscoll Lake.
Base Penalty:

>> Environmental, Property and Human Health Matrix
OR

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

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

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

Adjustment:

Violation Events
 Number of Violation Events: Number of violation days
 mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input checked="" type="text" value="X"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

 Five-monthly events are recommended from the date of the first investigation (September 30, 2008) to the date of screening (February 24, 2009).
Violation Base Penalty:

Good Faith Efforts to Comply **0.0% Reduction**

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="X"/>	(mark with x)

Notes: The Respondents do not meet the good faith criteria for this violation.
Violation Subtotal:

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: EL MODENO GARDENS, INC., P&E Groot Family Trust, and SEVILLE FARMS, INC.
Case ID No.: 37328
Reg. Ent. Reference No.: RN103777488
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$100,000	30-Sep-2008	31-Dec-2009	1.25	\$6,260	n/a	\$6,260
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to stabilize the Site and to collect and properly dispose of sediment. Date Required is the date of the investigation. Final Date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspector/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100,000

TOTAL

\$6,260

Compliance History Report

Customer/Respondent/Owner-Operator: CN602298267 EL MODENO GARDENS, INC. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN103777488 EL MODENO GARDENS SMITH COUNTY TEXAS SITE Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s):

Location: Located on the south side of County Road 313 East, approximately 0.4 mile west of the intersection of County Road 313 and FM 2015 North, in Smith County, Texas.

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: March 31, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 24, 2004 to February 24, 2009

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

Name: Steve Villatoro Phone: 512-239-4930

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |
| 6. Rating Date: 9/1/2008 Repeat Violator: NO | |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

N/A

Compliance History Report

Customer/Respondent/Owner-Operator: CN603442096 P&E Groot Family Trust Classification: AVERAGE Rating: 3.01
Regulated Entity: RN103777488 EL MODENO GARDENS SMITH COUNTY TEXAS SITE Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s):

Location: Located on the south side of County Road 313 East, approximately 0.4 mile west of the intersection of County Road 313 and Farm-to-Market 2015 North in Smith County, Texas.

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: April 03, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 24, 2004 to February 24, 2009

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

Name: Steve Villatoro Phone: 512-239-4930

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

N/A

Compliance History Report

Customer/Respondent/Owner-Operator: CN603473703 SEVILLE FARMS, INC. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN103777488 EL MODENO GARDENS SMITH COUNTY TEXAS SITE Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s):

Location: Located on the south side of County Road 313 East, approximately 0.4 mile west of the intersection of County Road 313 and Farm-to-Market 2015 North in Smith County, Texas.

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: April 28, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 24, 2004 to February 24, 2009

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

Name: Steve Villatoro Phone: 512-239-4930

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6.

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
EL MODENO GARDENS, INC., P&E
GROOT FAMILY TRUST, AND
SEVILLE FARMS, INC.
RN103777488**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-0459-WQ-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding EL MODENO GARDENS, INC., P&E Groot Family Trust, and SEVILLE FARMS, INC. ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. P&E Groot Family Trust owns property, EL MODENO GARDENS, INC. formerly operated a nursery authorized for construction activities and SEVILLE FARMS, INC. currently operates a nursery located on the south side of County Road 313 East, approximately 0.4 mile west of the intersection of County Road 313 and Farm-to-Market Road 2015 North in Smith County, Texas (the "Site").
2. The Respondents have discharged other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about February 23, 2009.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twelve Thousand Five Hundred Dollars (\$12,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Ten Thousand Dollars (\$10,000) of the administrative penalty and Two Thousand Five Hundred Dollars (\$2,500) is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner, former operator, and current operator of the Site, the Respondents are alleged to have failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), as documented during investigations conducted on September 30, 2008 and January 12, 2009. Specifically, the investigator observed significant sediment deposits in the creek, which discharged from denuded soil around and under the greenhouses located to the west of the Site's driveway. Furthermore, the ground to the south of the greenhouses was completely bare and unstabilized. A spring fed creek originates on the nursery property and discharges into an unnamed pond then to Driscoll Lake. The investigator measured sediment deposits covering an area approximately 12,000 square feet in the pond and 9,000 square feet in Driscoll Lake.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: EL MODENO GARDENS, INC., P&E Groot Family Trust, and SEVILLE FARMS, INC., Docket No. 2009-0459-WQ-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. EL MODENO GARDENS, INC., P&E Groot Family Trust, and SEVILLE FARMS, INC., the Respondents, are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. It is further ordered that the Respondents shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, ensure that final stabilization of the Site south and west of the greenhouses has been established by having a uniform, evenly distributed perennial vegetative covering of at least 70% of the native background vegetative cover for the area on all unpaved areas and areas not covered by permanent structures;
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 3.a. The certification shall be in accordance with Ordering Provision No. 3.d below;
 - c. Within 60 days after the effective date of this Agreed Order, remove visible accumulations of sediment from the unnamed tributary leading from the culvert under Nursery Drive, the unnamed pond, and Driscoll Lake and submit a written statement that the sediment material was removed and relocated or disposed of at a TCEQ authorized location, including a description of the specific location where the sediment was taken, the amount of material transported, and method of sediment removal, as described in Ordering Provision No. 3.d below; and
 - d. Within 75 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 3.c. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a and 3.c. The certification shall

be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

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

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If the Respondents fail 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, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this

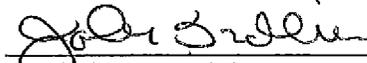
Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

8. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, 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

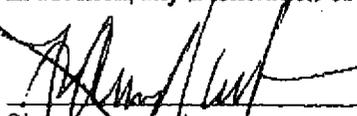
9/3/2009
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

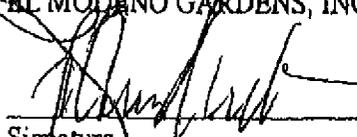
In addition, any falsification of any compliance documents may result in criminal prosecution.

~~~~
Signature

6/30/09
Date

JOANNE NEWTON
Name (Printed or typed)
Authorized Representative of
EL MODENO GARDENS, INC.

VP
Title

~~~~
Signature

6/30/09
Date

JOANNE NEWTON
Name (Printed or typed)
Authorized Representative of
P&E Groot Family Trust

REP
Title

EL MODENO GARDENS, INC., P&E Groot Family Trust, and SEVILLE FARMS, INC.
DOCKET NO. 2009-0459-WQ-E

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. ...
For the Executive Director

9/3/2009
Date

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- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

William A. Bratlinger, Pres.
Signature

7.16.2009
Date

William A. Bratlinger
Name (Printed or typed)
Authorized Representative of
SEVILLE FARMS, INC.

President
Title

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

