EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0471-MSW-E TCEQ ID: RN100950989 CASE NO.: 33191
RESPONDENT NAME: EARTH HAULERS, INC.

ORDER TYPE:		
__1660 AGREED ORDER	X FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
___AIR	___MULTI-MEDIA (check all that apply)	___INDUSTRIAL HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
___WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
_X MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__ DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 11500 Mosier Valley Road, Forth Worth, Tarrant County

TYPE OF OPERATION: Sand mining operation

SMALL BUSINESS: _X_ Yes ____ No

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired August 24, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2083
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Clinton Sims, Waste Enforcement Section, MC 169, (512) 239-6933

TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903

Respondent: Mr. Allen Tucker, President, Earth Haulers, Inc., 11500 Mosier Valley Road, Fort Worth, Texas 76040

Respondent's Attorney: Mr. Huey P. Mitchell, Huey P. Mitchell, P.C., 400 East Weatherford St., Fort Worth, Texas 76102

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** January 30, 2007 **Date of NOE Relating to this Case:** March 16, 2007 **Background Facts:** The EDPRP was filed on June 19, 2007. The Respondent filed an answer and the case was referred to SOAH. The preliminary hearing was held on September 28, 2007. After discovery was exchanged, an EDFARP was filed on August 28, 2008. The evidentiary hearing was continued to allow the parties additional time to negotiate a settlement agreement. The agreed order was signed on September 16, 2009. **Current Compliance Status:** Not in complete compliance. **MSW:** Failed to prevent the unauthorized disposal of municipal solid waste [30 TEX. ADMIN. CODE § 330.15(c)].	**Total Assessed:** $15,300 **Total Deferred:** $0 ___ Expedited Order ___ Financial Inability to Pay ___SEP Conditional Offset **Total Paid/Due to General Revenue:** $425/$14,875 The Respondent paid $425 of the administrative penalty. The remaining amount of $14,875 shall be paid in 35 monthly payments of $425 each. **Site Compliance History Classification** __ High _X_ Average __ Poor **Person Compliance History Classification** __ High _X_ Average __ Poor **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002 **Findings Order Justification:** The violation is a deviation from the standard of conduct common in a given industry, defined as an absence of management practices designed to ensure compliance.	**Ordering Provisions:** The Respondent shall undertake the following technical requirements: 1. Immediately, cease accepting additional waste at the Site. 2. Within 90 days, remove all accumulated materials from the Site and dispose of at an authorized facility. 3. In lieu of Ordering Provision no. 2: a. Within 30 days: i. Develop and submit a fire prevention plan to local fire officials; and ii. Submit documentation that shows acceptable financial assurance for the closure of the Site; and b. Within 60 days, submit to the MSW permits section, a Notice of Intent to operate a recycling facility. The Respondent shall respond completely and adequately to all letter requests for information concerning the notice of intent within 30 days after the date of such letters, or by any other deadline specified in writing. 4. Within 105 days, submit documentation to demonstrate compliance with either Ordering Provisions Nos. 1 and 2 or Ordering Provision Nos. 1 and 3.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision March 19, 2007*

TCEQ

DATES						
Assigned	19-Mar-2007					
PCW	9-Apr-2007	Screening	11-Apr-2007	EPA Due		

RESPONDENT/FACILITY INFORMATION

Respondent	Earth Haulers, Inc.		
Reg. Ent. Ref. No.	RN100950989		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	33191	No. of Violations	1
Docket No.	2007-0471-MSW-E	Order Type	Findings
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Clinton Sims
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1*: $15,000

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 — *Subtotals 2, 3, & 7*: $300

Notes: The Respondent has received one NOV for a dissimilar violation at this site in the past five years.

Culpability — No — 0% Enhancement — *Subtotal 4*: $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5*: $0

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

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

0% Enhancement* — *Subtotal 6*: $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$11,030
Approx. Cost of Compliance	$233,380

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: $15,300

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment*: $0

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

Notes:

Final Penalty Amount: $15,300

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: $15,300

DEFERRAL — 0% Reduction — *Adjustment*: $0

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

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY: $15,300

Screening Date 11-Apr-2007 **Docket No.** 2007-0471-MSW-E **PCW**

Respondent Earth Haulers, Inc.

Case ID No. 33191

Reg. Ent. Reference No. RN100950989

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

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%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 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 has received one NOV for a dissimilar violation at this site in the past five years.

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

Screening Date 11-Apr-2007 **Docket No.** 2007-0471-MSW-E **PCW**

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

Respondent Earth Haulers, Inc.

Case ID No. 33191

Reg. Ent. Reference No. RN100950989

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 330.15(c)

Violation Description Failed to prevent the unauthorized disposal of municipal solid waste, as documented during an investigation conducted on January 30, 2007. Specifically, approximately 40,217 cubic yards of mulch, brush and cut wooden logs were disposed of at the unauthorized site.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Harm		
Release	Major	Moderate	Minor
Actual	x		
Potential			

OR

Percent 50%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $5,000

$5,000

Violation Events

Number of Violation Events 3

71 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $15,000

Three monthly events are recommended based from the January 30, 2007 investigation date to the April 11, 2007 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $11,030

Statutory Limit Test

Violation Final Penalty Total $15,300

This violation Final Assessed Penalty (adjusted for limits) $15,300

Economic Benefit Worksheet

Respondent Earth Haulers, Inc.
Case ID No. 33191
Reg. Ent. Reference No. RN100950989
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	$233,380	30-Jan-2007	10-Jan-2008	0.9	$11,030	n/a	$11,030
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to remove the municipal solid waste and dispose of it at an approved municipal solid waste disposal site. Date Required is the investigation date 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	$233,380				TOTAL		$11,030

Compliance History

Customer/Respondent/Owner-Operator:	CN600604565	Earth Haulers, Inc.	Classification: AVERAGE	Rating: 2.34
Regulated Entity:	RN100950989	EARTH HAULERS	Classification: AVERAGE	Site Rating: 1.67

ID Number(s):			
	INDUSTRIAL AND HAZARDOUS WASTE TRANSPORTATION	EPA ID	TXD988058871
	INDUSTRIAL AND HAZARDOUS WASTE TRANSPORTATION	SOLID WASTE REGISTRATION # (SWR)	41732
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	PC0158Q
	STORMWATER	PERMIT	TXR05S701
	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER	100117
	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER	455040179

Location: 11500 MOSIER VALLEY RD, FORT WORTH, TX, 76040 Rating Date: 9/1/2006 Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: March 27, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 27, 2002 to March 27, 2007

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? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. if Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 08/28/2003 (152658)
2 03/16/2005 (350716)
3 03/16/2007 (542386)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/29/2003 (152658)

Self Report? NO Classificatio Major

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Description: Failure to obtain authorization to discharge storm water associated with industrial activity.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING EARTH HAULERS, INC., RN100950989	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-0471-MSW-E

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 Earth Haulers, Inc. ("Earth Haulers") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Earth Haulers, represented by Huey P. Mitchell of the law firm of "Huey P. Mitchell, P.C.", presented this agreement to the Commission.

Earth Haulers understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Earth Haulers agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Earth Haulers.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Earth Haulers operates a sand mining operation located at 11500 Mosier Valley Road, Fort Worth, Tarrant County, Texas (the "Site").

2. The Site involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.

3. During an inspection on January 30, 2007, a TCEQ DFW Regional investigator documented that Earth Haulers failed to prevent the unauthorized disposal of municipal solid waste. Specifically, approximately 40,217 cubic yards of mulch, brush and cut wooden logs were disposed of on the Site.

4. Earth Haulers received notice of the violation on or about March 21, 2007.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Earth Haulers is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3, Earth Haulers failed to prevent the unauthorized disposal of municipal solid waste, in violation of 30 TEX. ADMIN. CODE § 330.15(c).

3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Earth Haulers for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

4. An administrative penalty in the amount of fifteen thousand three hundred dollars ($15,300.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Earth Haulers paid four hundred twenty-five dollars ($425.00) of the administrative penalty. The remaining amount of fourteen thousand eight hundred seventy-five dollars ($14,875.00) of the administrative penalty shall be payable in 35 monthly payments of four hundred twenty-five dollars ($425.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Earth Haulers fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Earth Haulers to meet the payment schedule of this Agreed Order constitutes the failure by Earth Haulers to timely and satisfactorily comply with all the terms of this Agreed Order.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Earth Haulers is assessed an administrative penalty in the amount of fifteen thousand three hundred dollars ($15,300.00) as set forth in Conclusion of Law No. 4 for violations of TCEQ rules and state

statutes. The payment of this administrative penalty and Earth Hauler's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that 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: Earth Haulers, Inc.; Docket No. 2007-0471-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. Earth Haulers shall undertake the following technical requirements:

a. Immediately upon the effective date of this Agreed Order, Earth Haulers shall cease accepting additional waste at the Site, pursuant to 30 TEX. ADMIN. CODE § 330.15; and

b. Within 90 days after the effective date of this Agreed Order, Earth Haulers shall remove all accumulated materials from the Site and dispose of at an authorized facility; or

c. In lieu of Ordering Provision No. 2.b.:

i. Within 30 days after the effective date of this Agreed Order, Earth Haulers shall:

A. Develop and submit a fire prevention plan to local fire officials, in accordance with 30 TEX. ADMIN. CODE § 328.5(h); and

B. Submit documentation that demonstrates acceptable financial assurance for the closure of the Site, in accordance with 30 TEX. ADMIN. CODE § 330.5(f)(3) to:

Financial Assurance Team, MC 184
Texas Commission on Environmental Quality
P.O. Box 13807
Austin, Texas 78711-3087;

and

ii. Within 60 days after the effective date of this Agreed Order, Earth Haulers shall submit to the Municipal Sold Waste Permits Section, a notice of intent to operate a recycling facility. Earth Haulers shall respond completely and adequately to all letter requests for information concerning the notice of intent within 30 days after the date of such letters, or by any other deadline specified in writing;

d. Within 105 days after the effective date of this Agreed Order, Earth Haulers shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with either Ordering Provisions Nos. 2.a. and 2.b, or Ordering Provision Nos. 2.a. and 2.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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Municipal Solid Waste Permits Section, MC 124
Texas Commission on Environmental Quality
P.O. Box 13807
Austin, Texas 78711-3087

and

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

with a copy to:

Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission On Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76401

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

4. If Earth Haulers 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, Earth Haulers's failure to comply is not a violation of this Agreed Order. Earth

Haulers has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Earth Haulers shall notify the Executive Director within seven days after Earth Haulers 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 Earth Haulers shall be made in writing to the Executive Director. Extensions are not effective until Earth Haulers receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Earth Haulers, if the Executive Director determines that Earth Haulers has not complied with one or more of the terms or conditions in this Agreed Order.

7. 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.

8. This Agreed Order, issued by the Commission, shall not be admissible against Earth Haulers 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.

9. 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.

10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of the Order to Earth Haulers, or three days after the date on which the Commission mails notice of the Order to Earth Haulers, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

10/29/09
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Earth Haulers, Inc. I represent that I am authorized to agree to the attached Agreed Order on behalf of Earth Haulers, Inc., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Earth Haulers, Inc., waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

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

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

Signature

16 Sept 09
Date

Allen Tucker
Name (printed or typed)
Authorized Representative
Earth Haulers, Inc.

President
Title