

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2009-0652-MLM-E **TCEQ ID:** RN105425623 **CASE NO.:** 37879  
**RESPONDENT NAME:** Charles Mullins dba C & J Tree Service

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> C &amp; J Tree Service, 16986 Highway 205, Terrell, Kaufman County</p> <p><b>TYPE OF OPERATION:</b> Tree service</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on April 16, 2008, alleging unauthorized outdoor burning at the Respondent's property. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on November 30, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Martina Kusniadi, Enforcement Division, Enforcement Team 4, MC R-12, 713-767-3682; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Charles M. Mullins, Owner, C &amp; J Tree Service, 16986 Highway 205, Terrell, Texas 75160  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> April 16, 2008</p> <p><b>Date of Investigation Relating to this Case:</b> April 1, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> May 2, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a record review investigation.</p> <p><b>AIR/WASTE</b></p> <p>Failure to prevent outdoor burning and dumping or disposal of municipal solid waste within the State of Texas. Specifically, unauthorized outdoor burning at the back of the Respondent's property occurred on January 11, 2009 from a brush pile and wood chips that were brought from offsite [30 TEX. ADMIN. CODE §§ 111.201 and 330.15(c) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)]</p>	<p><b>Total Assessed:</b> \$2,694</p> <p><b>Total Deferred:</b> \$538  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$2,156</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease disposing of any additional waste and all unauthorized burning at the Site;</p> <p>b. Within 30 days after the effective date of this Agreed Order, ensure that all unauthorized waste, including burned material, at the Site is removed and properly disposed of at an authorized facility; and</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.</p>

Additional ID No(s): N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**  
**DATES**

Assigned 22-Jun-2009  
PCW 5-Aug-2009 Screening 29-Jun-2009 EPA Due

**RESPONDENT/FACILITY INFORMATION**

Respondent Charles Mullins dba C & J Tree Service  
Reg. Ent. Ref. No. RN105425623  
Facility/Site Region 4-Dallas/Fort Worth Major/Minor Source Minor

**CASE INFORMATION**

Enf./Case ID No. 37879 No. of Violations 2  
Docket No. 2009-0652-MLM-E Order Type 1660  
Media Program(s) Air Government/Non-Profit No  
Multi-Media Municipal Solid Waste Enf. Coordinator Martina Kusniadi  
EC's Team Enforcement Team 4  
Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 \$2,000

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History** 5.0% Enhancement Subtotals 2, 3, & 7 \$100

Notes The penalty was enhanced by one similar NOV.

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

Notes The Respondent does 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 \$598 \*Capped at the Total EB \$ Amount  
Approx. Cost of Compliance \$703

**SUM OF SUBTOTALS 1-7** Final Subtotal \$2,100

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 28.3% Adjustment \$594

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement to capture the avoided cost of proper disposal.

Final Penalty Amount \$2,694

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$2,694

**DEFERRAL** 20.0% Reduction Adjustment -\$538

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** \$2,156

**Screening Date** 29-Jun-2009

**Docket No.** 2009-0652-MLM-E

**PCW**

**Respondent** Charles Mullins dba C & J Tree Service

Policy Revision 2 (September 2002)

**Case ID No.** 37879

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN105425623

**Media [Statute]** Air

**Enf. Coordinator** Martina Kusniadi

### 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 <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 <i>(number of judgements or consent decrees meeting criteria)</i>	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 <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	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 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	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)** 5%

>> **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 penalty was enhanced by one similar NOV.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 5%

<b>Screening Date</b> 29-Jun-2009	<b>Docket No.</b> 2009-0862-MLM-E	<b>PCW</b>	
<b>Respondent</b> Charles Mullins dba C & J Tree Service	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 37879	<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN105425623			
<b>Media [Statute]</b> Air			
<b>Enf. Coordinator</b> Martina Kusnadi			
<b>Violation Number</b> <input type="text" value="1"/>			
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 111.201 and Tex. Health &amp; Safety Code § 382.085(b)"/>		
<b>Violation Description</b>	<input type="text" value="Failed to prevent outdoor burning. Specifically, unauthorized outdoor burning at the back of the Respondent's property occurred on January 11, 2009 from a brush pile and wood chips that were brought from offsite, as documented during a record review conducted on April 1, 2009."/>		
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
<b>OR</b>	<b>Harm</b>		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Percent</b>			<input type="text" value="10%"/>
<b>&gt;&gt; Programmatic Matrix</b>			
Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Percent</b>			<input type="text" value="0%"/>
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment was exposed to insignificant amounts of pollutants that did not exceed levels protective of human health or environmental receptors."/>		
<b>Adjustment</b>		<input type="text" value="\$9,000"/>	
		<input type="text" value="\$1,000"/>	
<b>Violation Events</b>			
Number of Violation Events <input type="text" value="1"/>		Number of violation days <input type="text" value="1"/>	
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input checked="" type="checkbox"/>	
<input type="text" value="One single event is recommended based on the date of the event."/>			
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>
		<small>Before NOV    NOV to EDRP/Settlement Offer</small>	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	<input checked="" type="checkbox"/>	<small>(mark with x)</small>	
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>		
<b>Violation Subtotal</b>		<input type="text" value="\$1,000"/>	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
Estimated EB Amount <input type="text" value="\$594"/>		Violation Final Penalty Total <input type="text" value="\$1,347"/>	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$1,347"/>	

## Economic Benefit Worksheet

**Respondent** Charles Mullins dba C & J Tree Service  
**Case ID No.** 37879  
**Reg. Ent. Reference No.** RN105425823  
**Media:** Air  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

**Delayed Costs**

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/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)	\$594	11-Jan-2009	11-Jan-2009	0.00	\$0	\$594	\$594

Notes for AVOIDED costs

Cost to collect and dispose of approximately 4,864 cubic yards of waste (that was burned) at a permitted municipal solid waste landfill. Date Required and the Final Date is the date of the outdoor burning event.

Approx. Cost of Compliance

\$594

**TOTAL**

\$594

<b>Screening Date</b> 29-Jun-2009	<b>Docket No.</b> 2009-0652-MLM-E	<b>PCW</b>														
<b>Respondent</b> Charles Mullins dba C & J Tree Service	<i>Policy Revision 2 (September 2002)</i>															
<b>Case ID No.</b> 37879	<i>PCW Revision October 30, 2009</i>															
<b>Reg. Ent. Reference No.</b> RN105425623																
<b>Media [Statute]</b> Air																
<b>Enf. Coordinator</b> Martina Kusniadi																
<b>Violation Number</b> <input type="text" value="2"/>																
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 330.15(c)															
<b>Violation Description</b>	Failed to comply with the general prohibition of dumping or disposal of municipal solid waste within the State of Texas. Specifically, approximately 5.33 cubic yards of brush piles and wood chips were disposed at an unauthorized site on January 11, 2009, as documented during a record review conducted on April 1, 2009.															
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>														
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																
<b>Harm</b>																
<b>OR</b>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">Major</td> <td style="width:33%; text-align: center;">Moderate</td> <td style="width:33%; text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input checked="" type="text" value="x"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> </table>		Major	Moderate	Minor	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>		
	Major	Moderate	Minor													
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>													
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	Major	Moderate	Minor													
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>													
<b>Matrix Notes</b>	Human health or the environment was exposed to insignificant amounts of pollutants that did not exceed levels protective of human health or environmental receptors.															
<b>Adjustment</b>		<input type="text" value="\$9,000"/>														
		<input type="text" value="\$1,000"/>														
<b>Violation Events</b>																
Number of Violation Events	<input type="text" value="1"/>	Number of violation days														
Number of violation days	<input type="text" value="1"/>															
<i>mark only one with an x</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="width:30%;">daily</td><td style="width:70%;"><input type="text"/></td></tr> <tr><td>weekly</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input checked="" type="text" value="x"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input checked="" type="text" value="x"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>
daily	<input type="text"/>															
weekly	<input type="text"/>															
monthly	<input type="text"/>															
quarterly	<input checked="" type="text" value="x"/>															
semiannual	<input type="text"/>															
annual	<input type="text"/>															
single event	<input type="text"/>															
One quarterly event is recommended from the record review date of April 1, 2009 to the date of screening (June 29, 2009).																
<b>Good Faith Efforts to Comply</b>		<b>0.0% Reduction</b> <input type="text" value="\$0"/>														
		<small>Before NOV      NOV to EDRP/Settlement Offer</small>														
Extraordinary	<input type="text"/>															
Ordinary	<input type="text"/>															
N/A	<input checked="" type="text" value="x"/> (mark with x)															
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.															
<b>Violation Subtotal</b>		<input type="text" value="\$1,000"/>														
<b>Economic Benefit (EB) for this violation</b>																
<b>Estimated EB Amount</b>	<input type="text" value="\$4"/>	<b>Statutory Limit Test</b>														
		<b>Violation Final Penalty Total</b> <input type="text" value="\$1,347"/>														
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$1,347"/>														

## Economic Benefit Worksheet

**Respondent** Charles Mullins dba C & J Tree Service  
**Case ID No.** 37879  
**Reg. Ent. Reference No.** RN105425623  
**Media** Air  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

	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				0.00	\$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	\$109	1-Apr-2009	1-Jan-2010	0.75	\$4	n/a	\$4
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Cost to collect and dispose of approximately 0.666 cubic yards of waste (waste remaining after burned). Date Required is the date of the record review and Final Date is the estimated date of compliance.

**Avoided Costs**

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/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

\$109

**TOTAL**

\$4

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603297284 Charles Mullins Classification: AVERAGE Rating: 3.00  
Regulated Entity: RN105425623 C & J TREE SERVICE Classification: AVERAGE Site Rating: 3.00  
ID Number(s):  
Location: 16986 HIGHWAY 205, TERRELL, TX, 75160  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: June 26, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: June 22, 2004 to June 22, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Martina Kusniadi Phone: 713-767-3682

## 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. 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.)

1 04/29/2009 (743636)

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

Date: 05/29/2008 (654995)

Self NO

Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201

5C THSC Chapter 382 382.085(b)

Description: Failure to meet an exception to the general prohibition on outdoor burning.

- 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

10/15

2

10/15/16/17/18/19

10/15/16/17/18/19

10/15/16/17/18/19

10/15/16/17/18/19

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CHARLES MULLINS DBA C & J  
TREE SERVICE  
RN105425623

§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-0652-MLM-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 Charles Mullins dba C & J Tree Service ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a tree service at 16986 Highway 205 in Terrell, Kaufman County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12). The Site involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 7, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Thousand Six Hundred Ninety-Four Dollars (\$2,694) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand One Hundred Fifty-Six Dollars (\$2,156) of the administrative penalty and Five Hundred Thirty-Eight Dollars (\$538) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent 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 Respondent 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 Respondent has 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 and operator of the Site, the Respondent is alleged to have failed to prevent outdoor burning and dumping or disposal of municipal solid waste within the State of Texas, in violation of 30 TEX. ADMIN. CODE §§ 111.201 and 330.15(c) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on April 1, 2009. Specifically, unauthorized outdoor burning at the back of the Respondent's property occurred on January 11, 2009 from a brush pile and wood chips that were brought from offsite.

## III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Charles Mullins dba C & J Tree Service, Docket No. 2009-0652-MLM-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, cease disposing of any additional waste and all unauthorized burning at the Site;
  - b. Within 30 days after the effective date of this Agreed Order, ensure that all unauthorized waste, including burned material, at the Site is removed and properly disposed of at an authorized facility;
  - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. 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 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:

Air Section, Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is 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.
4. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 the Respondent 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 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

John Szalun  
For the Executive Director

11/2/2009  
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.

Charles Mullins  
Signature

9-4-09  
Date

Charles Mullins  
Name (Printed or typed)  
Authorized Representative of  
Charles Mullins dba C & J Tree Service

Owner  
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.

