

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1289-AIR-E **TCEQ ID:** RN100733138 **CASE NO.:** 38127

RESPONDENT NAME: Fort Worth Excavating, 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 checked="" type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE |
| <input type="checkbox"/> PUBLIC WATER SUPPLY | <input type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |
| <p>SITE WHERE VIOLATION(S) OCCURRED: Fort Worth Excavating, 5265 Shelby Road, Fort Worth, Tarrant County</p> <p>TYPE OF OPERATION: Sand excavating and mulching plant</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on November 17, 2008, alleging an off-property dust nuisance. 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 April 12, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Kirk Schoppe, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-0489; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Frank Stegient, President/Owner, Fort Worth Excavating, Inc., 5265 Shelby Road, Fort Worth, Texas 76140 Respondent's Attorney: Mr. Lane Odom, Berry, Odom, Rabinowitz, LLP, 611 9th Avenue, Fort Worth, Texas 76104</p> | | |

| 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: November 17, 2008</p> <p>Date of Investigation Relating to this Case: June 9, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 21, 2009 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>AIR</p> <p>Failure to obtain authorization prior to the construction/operation of a portable mulch grinding unit [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p> | <p>Total Assessed: \$5,160</p> <p>Total Deferred: \$1,032 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$138 (remaining \$3,990 due in 35 monthly payments of \$114 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 15 days after the effective date of this Agreed Order, demonstrate that the Plant can meet the requirements of 30 TEX. ADMIN. CODE ch. 332 or submit an administratively complete permit application;</p> <p>b. If a permit application is submitted, then respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing; and</p> <p>c. Within 180 days after the effective date of this Agreed Order, submit written certification that either authorization to construct and operate a source of air emissions has been obtained or that construction/operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance.</p> |

Additional ID No(s): TA1189L



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

| | | | | | | |
|--------------|----------|-------------|-----------|-------------|---------|--|
| DATES | Assigned | 27-Jul-2009 | Screening | 10-Aug-2009 | EPA Due | |
| | PCW | 3-Aug-2009 | | | | |

| | | | |
|--|-----------------------------|--------------------|-------|
| RESPONDENT/FACILITY INFORMATION | | | |
| Respondent | Fort Worth Excavating, Inc. | | |
| Reg. Ent. Ref. No. | RN100733138 | | |
| Facility/Site Region | 4-Dallas/Fort Worth | Major/Minor Source | Minor |

| | | | |
|---------------------------------|-----------------|-----------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 38127 | No. of Violations | 1 |
| Docket No. | 2009-1289-AIR-E | Order Type | 1660 |
| Media Program(s) | Air | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Kirk Schoppe |
| | | 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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement Subtotals 2, 3, & 7

Notes

Culpability Enhancement Subtotal 4

Notes

Good Faith Effort to Comply Total Adjustments Subtotal 5

Economic Benefit Enhancement* Subtotal 6

Total EB Amounts
Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes

PAYABLE PENALTY

Screening Date 10-Aug-2009

Docket No. 2009-1289-AIR-E

PCW

Respondent Fort Worth Excavating, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38127

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100733138

Media [Statute] Air

Enf. Coordinator Kirk Schoppe

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 | 1 | 2% |
| Orders | Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i> | 2 | 40% |
| | 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 | 1 | 25% |
| 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% |
| <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) 72%

>> **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 due to one NOV for similar violations, one NOV for dissimilar violations, two 1660-style orders, and one Findings order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 72%

| | | | |
|---|--|--|-------------------------------|
| Screening Date 10-Aug-2009 | Docket No. 2009-1289-AIR-E | PCW | |
| Respondent Fort Worth Excavating, Inc. | | <small>Policy Revision 2 (September 2002)</small> | |
| Case ID No. 38127 | | <small>PCW Revision October 30, 2008</small> | |
| Reg. Ent. Reference No. RN100733138 | | | |
| Media [Statute] Air | | | |
| Enf. Coordinator Kirk Schoppe | | | |
| Violation Number 1 | | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b) | | |
| Violation Description | Failed to obtain authorization prior to the construction/operation of a portable mulch grinding unit. | | |
| | Base Penalty | \$10,000 | |
| >> Environmental, Property and Human Health Matrix | | | |
| OR | Harm | | |
| | Major | Moderate | Minor |
| Actual | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Potential | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | | Percent | 0% |
| >> Programmatic Matrix | | | |
| | Major | Moderate | Minor |
| Falsification | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | | Percent | 10% |
| Matrix Notes | 100% of the rule requirement was not met. | | |
| | Adjustment | \$9,000 | |
| | | Subtotal | \$1,000 |
| Violation Events | | | |
| Number of Violation Events | 3 | Number of violation days | 62 |
| <small>mark only one with an x</small> | daily | <input type="checkbox"/> | Violation Base Penalty |
| | weekly | <input type="checkbox"/> | |
| | monthly | <input checked="" type="checkbox"/> | |
| | quarterly | <input type="checkbox"/> | |
| | semiannual | <input type="checkbox"/> | |
| | annual | <input type="checkbox"/> | |
| | single event | <input type="checkbox"/> | |
| | Violation Base Penalty | | \$3,000 |
| | Three monthly events are recommended from the investigation date of June 9, 2009 to the screening date of August 10, 2009. | | |
| Good Faith Efforts to Comply | | | |
| | 0.0% Reduction | Subtotal | |
| | <small>Before NOV</small> | <small>NOV to EDPRP/Settlement Offer</small> | \$0 |
| Extraordinary | <input type="checkbox"/> | <input type="checkbox"/> | |
| Ordinary | <input type="checkbox"/> | <input type="checkbox"/> | |
| N/A | <input checked="" type="checkbox"/> | <small>(mark with x)</small> | |
| Notes | The Respondent does not meet the good faith criteria for this violation. | | |
| | Violation Subtotal | \$3,000 | |
| Economic Benefit (EB) for this violation | | Statutory Limit Test | |
| Estimated EB Amount | \$221 | Violation Final Penalty Total | \$5,160 |
| | | This violation Final Assessed Penalty (adjusted for limits) | \$5,160 |

Economic Benefit Worksheet

Respondent Fort Worth Excavating, Inc.
Case ID No. 38127
Reg. Ent. Reference No. RN100733138
Media Air
Violation No. 1

| | |
|-------------------------|------------------------------|
| Percent Interest | Years of Depreciation |
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Overtime 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 | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | \$5,000 | 9-Jun-2009 | 28-Apr-2010 | 0.88 | \$221 | n/a | \$221 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost for preparation and submittal of a new permit application. Date required is the date of the investigation. Final date is the date of prospective 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

\$5,000

TOTAL

\$221

Compliance History Report

Customer/Respondent/Owner-Operator: CN600419923 Fort Worth Excavating, Inc. Classification: AVERAGE Rating: 3.34
Regulated Entity: RN100733138 FORT WORTH EXCAVATING Classification: AVERAGE Site Rating: 4.00

ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 87533
AIR NEW SOURCE PERMITS ACCOUNT NUMBER TA1189L
STORMWATER PERMIT TXR05R611
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER455040173

Location: 5265 SHELBY RD, FORT WORTH, TX, 76140

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: July 28, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 28, 2004 to July 28, 2009

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

Name: Kirk Schoppe Phone: 239 - 0489

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.

Effective Date: 10/23/2008 ADMINORDER 2004-1318-WQ-E
N/A

Classification: Major

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

40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(a)

Description: Failure to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit.

Effective Date: 04/05/2009 ADMINORDER 2008-1540-AIR-E

Classification: Major

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)

5C THSC Chapter 382 382.0518(a)

5C THSC Chapter 382 382.085(b)

Description: Failed to obtain a permit or to satisfy the conditions of a permit-by-rule prior to operating an Extec portable screening unit.

Effective Date: 07/09/2009

ADMINORDER 2007-0152-MSW-E

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)

Description: Unauthorized storage, processing, and disposal of municipal solid waste (brush, construction and demolition waste, and mulch).

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 | 08/09/2004 | (287556) |
| N/A | 2 | 02/26/2007 | (540421) |
| | 3 | 11/13/2008 | (707337) |
| | 4 | 03/09/2009 | (737972) |
| | 5 | 05/28/2009 | (746903) |
| | 6 | 06/09/2009 | (739447) |
| | 7 | 07/21/2009 | (759803) |

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

| | | | |
|------------------|---|----------|--------------------------|
| Date: | 11/30/2006 | (455074) | CN600419923 |
| N/A Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 116, SubChapter B 116.110(a) 5C THC Chapter 382, SubChapter A 382.0518(a) 5C THC Chapter 382, SubChapter A 382.085(b) | | |
| Description: | Failure to obtain a permit or satisfy the conditions of a permit-by-rule (PBR) for facilities comprised of sand and gravel processing operations. | | |

| | | | |
|--------------|---|----------|-----------------------|
| Date: | 06/30/2008 | (684710) | CN600419923 |
| Self Report? | NO | | Classification: Major |
| Citation: | 30 TAC Chapter 281, SubChapter A 281.25(a)(4) TXR050000 PERMIT | | |
| Description: | Failure to make the SWP3 readily available. (MSGP, Part III, Section A) While some information from the SWP3 was available, Fort Worth Excavating could not locate and provide a completed SWP3 at the time of the investigation, or after. | | |

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
FORT WORTH EXCAVATING, INC.
RN100733138

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1289-AIR-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 Fort Worth Excavating, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Mr. Lane Odom of the law firm Berry, Odom, and Rabinowitz, LLP, appear before the Commission and together stipulate that:

1. The Respondent owns and operates a sand excavating and mulching plant at 5265 Shelby Road in Fort Worth, Tarrant County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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 July 26, 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 Five Thousand One Hundred Sixty Dollars (\$5,160) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Thirty-Eight Dollars (\$138) of the administrative penalty

and One Thousand Thirty-Two Dollars (\$1,032) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Three Thousand Nine Hundred Ninety Dollars (\$3,990) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Fourteen Dollars (\$114) each. The next 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 the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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 the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 Plant, the Respondent is alleged to have failed to obtain authorization prior to the construction/operation of a portable mulch grinding unit, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during an investigation conducted on June 9, 2009.

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: Fort Worth Excavating, Inc., Docket No. 2009-1289-AIR-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. Within 15 days after the effective date of this Agreed Order, demonstrate that the Plant can meet the requirements of 30 TEX. ADMIN. CODE ch. 332 or submit an administratively complete permit application in accordance with 30 TEX. ADMIN. CODE § 116.110 to:

Air Permits Division, MC 162
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. If a permit application is submitted, then respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing; and
- c. Within 180 days after the effective date of this Agreed Order, submit written certification that either authorization to construct and operate a source of air emissions has been obtained or that construction/operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, 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."

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 Plant 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.

Fort Worth Excavating, Inc.
DOCKET NO. 2009-1289-AIR-B
Page 5

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]
For the Executive Director

3/16/2010
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.

Frank Stegient
Signature

2/8/10
Date

Frank Stegient
Name (Printed or typed)
Authorized Representative of
Fort Worth Excavating, 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.

