

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1693-MLM-E **TCEQ ID:** RN102837382 **CASE NO.:** 38558

RESPONDENT NAME: BIXBY ENTERPRISES, INC. dba Out on a Limb

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input 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 checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Out On A Limb, south side of Redland Road, 1,400 feet west of Gold Canyon Road, San Antonio, Bexar County</p> <p>TYPE OF OPERATION: Tree trimming business</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 12, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Clinton Sims, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-6933; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Randy Bixby, Owner, BIXBY ENTERPRISES, INC., 18765 Redland Road, San Antonio, Texas 78259; Ms. Susan Bixby, Vice President, BIXBY ENTERPRISES, Inc., 18765 Redland Road, San Antonio, Texas 78259 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: September 3, 2009</p> <p>Date of NOE Relating to this Case: October 12, 2009</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER/WASTE</p> <p>1) Failure to prevent the unauthorized storage and disposal of municipal solid waste. Specifically, approximately 2,500 cubic yards of combustible materials (mulch, brush, and tree trimmings) were stored on the ground at the Facility [30 TEX. ADMIN. CODE § 330.15(c)].</p> <p>2) Failure to obtain approval of a modification to the December 7, 1999 Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, it was observed that the area directly behind the office building had been paved over, mulch piles generated from tree trimming activities were stored on the property, and other equipment (vehicles, tree trimming equipment, and construction equipment) had been stored in various areas of the property. All of these activities are not covered in the December 7, 1999 WPAP [30 TEX. ADMIN. CODE § 213.4(j)(2) and (3) and Edwards Aquifer Protection Plan No. 1342.0].</p>	<p>Total Assessed: \$8,540</p> <p>Total Deferred: \$1,708 <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: \$217 (remaining \$6,615 due in 35 monthly payments of \$189 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: The Order will require the Respondent to:</p> <p>a. Within 60 days after the effective date of this Agreed Order:</p> <p>i. Cease accepting any additional waste at the Facility; and</p> <p>ii. Remove all accumulated materials and dispose at an authorized facility; or</p> <p>b. Within 60 days after the effective date of this Agreed Order, achieve compliance to operate a recycling facility by:</p> <p>i. Submitting a notice of intent to operate a recycling facility;</p> <p>ii. Submitting documentation that demonstrates acceptable financial assurance for the closure of the Facility;</p> <p>iii. Submitting documentation demonstrating that at least 50% by weight or volume of the material accumulated at the Facility for recycling is recycled or transferred to a different site for recycling; and</p> <p>iv. Developing and submitting a fire prevention plan to local fire officials.</p> <p>c. Within 30 days after the effective date of this Agreed Order, submit an administratively complete application for approval of a modification to a WPAP and associated application fee;</p> <p>d. Respond completely and adequately to all TCEQ requests for additional information within 30 days of such requests, or by any other deadline specified in writing; and</p> <p>e. Within 75 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 Provision Nos. a. or b. through d.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	12-Oct-2009	Screening	16-Oct-2009	EPA Due	
	PCW	16-Oct-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	BIXBY ENTERPRISES, INC. dba Out on a Limb		
Reg. Ent. Ref. No.	RN102837382		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38558	No. of Violations	2
Docket No.	2009-1693-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Edwards Aquifer	Enf. Coordinator	Clinton Sims
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit	Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$7,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **Subtotals 2, 3, & 7** \$1,540

Notes: Enhancement for one NOV without same or similar violations and one order containing a denial of liability.

Culpability **Subtotal 4** \$0

Notes: The Respondent does not meet the culpability criteria.

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

Economic Benefit **Subtotal 6** \$0

Total EB Amounts \$1,132
Approx. Cost of Compliance \$27,637
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$8,540

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$8,540

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$8,540

DEFERRAL **Adjustment** -\$1,708

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 **\$6,832**

Screening Date 16-Oct-2009

Docket No. 2009-1693-MLM-E

PCW

Respondent BIXBY ENTERPRISES, INC. dba Out on a Limb

Policy Revision 2 (September 2002)

Case ID No. 38558

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN102837382

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	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) 22%

>> 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

Enhancement for one NOV without same or similar violations and one order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 22%

Screening Date 16-Oct-2009

Docket No. 2009-1693-MLM-E

PCW

Respondent BIXBY ENTERPRISES, INC. dba Out on a Limb

Policy Revision 2 (September 2002)

Case ID No. 38558

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102837382

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 storage and disposal of municipal solid waste. Specifically, approximately 2,500 cubic yards of combustible materials (mulch, brush, and tree trimmings) were stored on the ground.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2

43 Number of violation days

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Two monthly events are recommended from the September 3, 2009 investigation date to the October 16, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$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 for this violation.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$968

Violation Final Penalty Total \$6,100

This violation Final Assessed Penalty (adjusted for limits) \$6,100

Economic Benefit Worksheet

Respondent SIXBY ENTERPRISES, INC. dba Out on a Limb
Case ID No. 38558
Reg. Ent. Reference No. RN102837382
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
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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	\$23,637	3-Sep-2009	29-Jun-2010	0.82	\$968	n/a	\$968
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and properly dispose of the municipal solid waste. The Date Required is the investigation date and the Final Date is the expected compliance date.

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)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$23,637

TOTAL

\$968

Screening Date 18-Oct-2009

Docket No. 2009-1693-MLM-E

PCW

Respondent BIXBY ENTERPRISES, INC. dba Out on a Limb

Policy Revision 2 (September 2002)

Case ID No. 38558

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102837382

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 213.4(j)(2) and (3) and Edwards Aquifer Protection Plan No. 1342.0

Violation Description

Failed to obtain approval of a modification to the December 7, 1999 Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, it was observed that the area directly behind the office building had been paved over, mulch piles generated from tree trimming activities were stored on the property, and other equipment (vehicles, tree trimming equipment, and construction equipment) had been stored in various areas of the property. All of these activities are not covered in the December 7, 1999 WPAP.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

43 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,000

Two monthly events are recommended from the September 3, 2009 investigation date to the October 16, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$164

Violation Final Penalty Total \$2,440

This violation Final Assessed Penalty (adjusted for limits) \$2,440

Economic Benefit Worksheet

Respondent BIXBY ENTERPRISES, INC. dba Out on a Limb

Case ID No. 38558

Reg. Ent. Reference No. RN102837382

Media Municipal Solid Waste

Violation No. 2

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

Item Description	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	\$4,000	3-Sep-2009	29-Jun-2010	0.82	\$164	n/a	\$164
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost reflects the amount to prepare and submit a modification to a WPAP. The Date Required is the investigation date and the Final Date is the expected compliance date.

Avoided Costs

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

Item Description	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)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,000

TOTAL

\$164

Compliance History Report

Customer/Respondent/Owner-Operator: CN601439300 BIXBY ENTERPRISES, INC. Classification: AVERAGE Rating: 25.50
Regulated Entity: RN102837382 OUT ON A LIMB Classification: AVERAGE Site Rating: 25.50
ID Number(s): EDWARDS AQUIFER REGISTRATION 13-99090103
Location: S SIDE OF REDLAND RD 1400 FT W OF GOLD CANYON RD
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: October 14, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 14, 2004 to October 14, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Clinton Sims Phone: 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/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. Ruling Date: 9/1/2009 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: 02/18/2007 ADMINORDER 2006-1034-AIR-E
Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4
5C THC Chapter 382, SubChapter D 382.085(a)
5C THC Chapter 382, SubChapter D 382.085(b)
Description: Failed to prevent wood dust and mulch emissions from causing a nuisance condition, in violation of 30 Tex. Admin. Code § 101.4 and Tex. Health and Safety Code § 382.085(a) and (b).
- 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 | 01/10/2006 | (451523) |
| 2 | 10/09/2009 | (777880) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 11/07/2005 (435889)
- Self NO Classification: Moderate
Report?
Citation: 30 TAC Chapter 101, SubChapter A 101.4
Description: Company generated finely graded mulching dust that was carried by surface winds across property lines onto businesses nearby that deprived these businesses of the useful enjoyment of their property.
Self NO Classification: Moderate
Report?
Citation: 30 TAC Chapter 332, SubChapter A 332.8(b)(2)

Description: Company is entitled to the Air Quality Standard Permit authorized under 30 TAC Rule 332.8 for their mulching operation, but is not in compliance with the requirements of Rule 332.8(b) which requires watering of roads, water sprays on grinders, and dust suppression on their conveyor.

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
BIXBY ENTERPRISES, INC. DBA
OUT ON A LIMB
RN102837382**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-1693-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 BIXBY ENTERPRISES, INC. dba Out on a Limb ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. 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 trimming business on the south side of Redland Road, 1,400 feet west of Gold Canyon Road in San Antonio, Bexar County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
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 October 17, 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 Eight Thousand Five Hundred Forty Dollars (\$8,540) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Seventeen Dollars (\$217) of the administrative penalty and One Thousand Seven Hundred Eight Dollars (\$1,708) 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 Six Thousand Six Hundred Fifteen Dollars (\$6,615) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Eighty-Nine Dollars (\$189) 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 Facility, the Respondent is alleged to have:

1. Failed to prevent the unauthorized storage and disposal of municipal solid waste, in violation of 30 TEX. ADMIN. CODE § 330.15(c), as documented during an investigation conducted on September 3, 2009. Specifically, approximately 2,500 cubic yards of combustible materials (mulch, brush, and tree trimmings) were stored on the ground at the Facility.

2. Failed to obtain approval of a modification to the December 7, 1999 Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(j)(2) and (3) and Edwards Aquifer Protection Plan No. 1342.0, as documented during an investigation conducted on September 3, 2009. Specifically, it was observed that the area directly behind the office building had been paved over, mulch piles generated from tree trimming activities were stored on the property, and other equipment (vehicles, tree trimming equipment, and construction equipment) had been stored in various areas of the property. All of these activities are not covered in the December 7, 1999 WPAP.

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: BIXBY ENTERPRISES, INC. dba Out on a Limb, Docket No. 2009-1693-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. Within 60 days after the effective date of this Agreed Order:
 - i. Cease accepting any additional waste at the Facility; and
 - ii. Remove all accumulated materials and dispose at an authorized facility; or
 - b. Within 60 days after the effective date of this Agreed Order, achieve compliance to operate a recycling facility by:
 - i. Submitting a notice of intent to operate a recycling facility, in accordance with 30 TEX. ADMIN. CODE § 328.5(b);
 - ii. Submitting documentation that demonstrates acceptable financial assurance for the closure of the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 37.921, 328.5(d) and 328.5(f)(3) to:

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

- iii. Submitting documentation demonstrating that at least 50% by weight or volume of the material accumulated at the Facility for recycling is recycled or transferred to a different site for recycling, in accordance with 30 TEX. ADMIN. CODE §§ 328.4(b) and 328.5(f); and
 - iv. Developing and submitting a fire prevention plan to local fire officials, in accordance with 30 TEX. ADMIN. CODE § 328.5(h).
- c. Within 30 days after the effective date of this Agreed Order, submit an administratively complete application for approval of a modification to a WPAP and associated application fee, in accordance with 30 TEX. ADMIN. CODE § 213.4(a)(1) to:

Edwards Aquifer Protection Program
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

- d. Respond completely and adequately to all TCEQ requests for additional information within 30 days of such requests, or by any other deadline specified in writing; and
- e. Within 75 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. or 2.b. through 2.d. 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:

Waste Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

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 Facility 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 Szdlin
For the Executive Director

4/15/2010
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.

Susan Bixby
Signature

Feb. 2, 2010
Date

Susan Bixby
Name (Printed or typed)
Authorized Representative of
BIXBY ENTERPRISES, INC. dba Out on a Limb

Vice 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.