EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1370-MLM-E **TCEQ ID:** RN105241756 **CASE NO.:** 40257

RESPONDENT NAME: BAILEY BARK MATERIALS, INC.

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	X MULTI-MEDIA (check all that apply)	X INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
X MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: BAILEY BARK MAIN FACILITY, 3366 Farm-to-Market Road 2259, Nacogdoches, Nacogdoches County

TYPE OF OPERATION: Mulching and composting facility

SMALL BUSINESS: X **Yes** ___ **No**

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 28, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
Respondent: Mr. Bradley Bailey, Vice President, BAILEY BARK MATERIALS, INC., 3366 Farm-to-Market Road 2259, Nacogdoches, Texas 75961-8658
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __ Routine __ Enforcement Follow-up X Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** July 26, 2010 **Date of NOV/NOE Relating to this Case:** August 12, 2010 (NOE) **Background Facts:** This was a records review. **WASTE** 1) Failed to notify the Executive Director of recycling operations prior to accepting recyclable materials generated at an industrial facility. Specifically, the Respondent was receiving waste from industrial sources, recycling materials into mulch and compost, and did not submit notification prior to the acceptance of recycling operations [30 TEX. ADMIN. CODE § 335.6(a)]. 2) Failed to submit a Notice of Intent to operate a recycling facility to the Executive Director at least 90 days prior to engaging in recycling activities. Specifically, the Respondent did not respond to a 2007 notice of deficiency letter requesting additional information to include financial assurance, and continued to operate without first obtaining authorization as a recycling facility [30 TEX. ADMIN. CODE §§ 328.5(b) and 330.11(e)(2)].	**Total Assessed:** $1,040 **Total Deferred:** $208 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $832 **Compliance History Classifications:** Person/CN - Average Site/RN - High **Major Source:** __ Yes X No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Immediately upon the effective date of this Agreed Order, cease accepting and processing any recyclable materials at the Facility until properly authorized; b. Within 30 days after the effective date of this Agreed Order: i. Submit a Notice of Intent to operate a recycling facility; ii. Notify the agency of recycling operations prior to accepting recyclable materials; iii. Obtain financial assurance for closure of the Facility; and iv. Develop and submit a fire prevention plan. 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. through b.iv.

Additional ID No(s).: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	16-Aug-2010				
PCW	4-Jan-2011	Screening	18-Aug-2010	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	BAILEY BARK MATERIALS, INC.		
Reg. Ent. Ref. No.	RN105241756		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	40257	No. of Violations	1
Docket No.	2010-1370-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Industrial and Hazardous Waste	Enf. Coordinator	Judy Kluge
		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* **$1,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **4.0%** Enhancement *Subtotals 2, 3, & 7* **$40**

Notes: Enhancement for two prior dissimilar NOVs.

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 $8
Approx. Cost of Compliance $200

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* **$1,040**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$1,040**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **$1,040**

DEFERRAL **20.0%** Reduction *Adjustment* **-$208**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$832**

Screening Date 18-Aug-2010 **Docket No.** 2010-1370-MLM-E **PCW**

Respondent BAILEY BARK MATERIALS, INC.

Policy Revision 2 (September 2002)

Case ID No. 40257

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105241756

Media [Statute] Municipal Solid Waste

Enf. Coordinator Judy Kluge

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%
		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 4%

>> 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 two prior dissimilar NOVs.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 4%

Screening Date 18-Aug-2010 **Docket No.** 2010-1370-MLM-E **PCW**

Respondent BAILEY BARK MATERIALS, INC.

Policy Revision 2 (September 2002)

Case ID No. 40257

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105241756

Media [Statute] Municipal Solid Waste

Enf. Coordinator Judy Kluge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 335.6(a), 328.5(b), and 330.11(e)(2)

Violation Description Failed to notify the Executive Director of recycling operations prior to accepting recyclable materials generated at an industrial facility. Specifically, the Respondent was receiving waste (boiler ash) from industrial sources, and began recycling materials into mulch and compost, but did not submit prior notification. Also, failed to submit a Notice of Intent to operate a recycling facility to the Executive Director at least 90 days prior to engaging in recycling activities. Specifically, the Respondent did not respond to a 2007 notice of deficiency letter requesting additional information to include financial assurance, and continued to operate without first obtaining authorization as a recycling facility.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	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 1 | 23 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One monthly event is recommended from the July 26, 2010 record review date to the August 18, 2010 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 $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $8

Statutory Limit Test

Violation Final Penalty Total $1,040

This violation Final Assessed Penalty (adjusted for limits) $1,040

Economic Benefit Worksheet

Respondent BAILEY BARK MATERIALS, INC.
Case ID No. 40257
Reg. Ent. Reference No. RN105241756
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or $							
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$200	9-Oct-2010	13-May-2011	0.59	$6	n/a	$6

Notes for DELAYED costs Estimated cost to notify the Executive Director of recycling operations. The date required is the date of the deficiency letter and the final date is the expected date of compliance.

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

Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
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 $200

TOTAL $6

Compliance History Report

Customer/Respondent/Owner-Operator: CN601080856 BAILEY BARK MATERIALS, INC. Classification: AVERAGE Rating: 1.37

Regulated Entity: RN105241756 BAILEY BARK MAIN FACILITY Classification: HIGH Site Rating: 0.00

ID Number(s): Non-Permitted

Location: 3366 FM 2259, NACOGDOCHES, TX, 75961

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: August 16, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 16, 2005 to August 16, 2010

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

Name: Judy Kluge Phone: (817) 588-5825

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: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 08/10/2007 (565831)
2 04/29/2010 (800946)

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

Date: **02/22/2010** (791547)
Self Report? NO Classification: Moderate
Citation: TWC Chapter 26 26.121(a)(2)
Description: Failure to prevent an Unauthorized Discharge.

Date: **05/04/2010** (784985)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 332, SubChapter A 332.8(a)(2)
5C THSC Chapter 382 382.085(b)
Description: Failure to meet the air quality rules of 30 TAC 332 Composting Rules or without having proper authorization for the equipment under the Texas Clean Air Act.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 332, SubChapter A 332.8(b)(3)
Description: Failure to operate the Grinder with either low velocity spray nozzles or have portable watering equipment available during grinding operations.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 332, SubChapter A 332.8(b)(4)
Description: Failure to have available or equip all conveyors with a water or mechanical dust suppression system.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 332, SubChapter A 332.8(c)(1)
Description: Failure to maintain a setback distance of 50 feet from all property boundaries.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 332, SubChapter A 332.8(c)(3)
Description: Failure to properly handle and store chicken liter.

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	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	**TEXAS COMMISSION ON**
BAILEY BARK MATERIALS, INC.	**§**	
RN105241756	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-1370-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 BAILEY BARK MATERIALS, INC. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 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 mulching and composting facility at 3366 Farm-to-Market Road 2259 in Nacogdoches, Nacogdoches County, Texas (the "Facility").

2. The Respondent involves or involved the management of municipal solid waste ("MSW") 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 August 17, 2010.

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 One Thousand Forty Dollars ($1,040) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eight Hundred Thirty-Two Dollars ($832) of

the administrative penalty and Two Hundred Eight Dollars ($208) 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 Facility, the Respondent is alleged to have:

1. Failed to notify the Executive Director of recycling operations prior to accepting recyclable materials generated at an industrial facility, in violation of 30 TEX. ADMIN. CODE § 335.6(a), as documented during a record review conducted on July 26, 2010. Specifically, the Respondent was receiving waste from industrial sources, recycling materials into mulch and compost, and did not submit notification prior to the acceptance of recycling operations.

2. Failed to submit a Notice of Intent to operate a recycling facility to the Executive Director at least 90 days prior to engaging in recycling activities, in violation of 30 TEX. ADMIN. CODE §§ 328.5(b) and 330.11(e)(2), as documented during a record review conducted on July 26, 2010. Specifically, the Respondent did not respond to a 2007 notice of deficiency letter requesting additional information to include financial assurance, and continued to operate without first obtaining authorization as a recycling facility.

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: BAILEY BARK MATERIALS, INC., Docket No. 2010-1370-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 accepting and processing any recyclable materials at the Facility until properly authorized;

   b. Within 30 days after the effective date of this Agreed Order:

      i. Submit a Notice of Intent to operate a recycling facility, in accordance with 30 TEX. ADMIN. CODE § 328.5 to:

         Municipal Solid Waste Permits Section, MC 124
         Texas Commission on Environmental Quality
         P.O. Box 13087
         Austin, Texas 78711-3087

      ii. Notify the agency of recycling operations prior to accepting recyclable materials, in accordance with 30 TEX. ADMIN. CODE § 335.6 to:

         Industrial and Hazardous Waste Permits Section, MC 130
         Texas Commission on Environmental Quality
         P.O. Box 13087
         Austin, Texas 78711-3087

      iii. Obtain financial assurance for closure of the Facility, in accordance with 30 TEX. ADMIN. CODE § 328.4(b) and 328.5(d);

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

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. through 2.b.iv. 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
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

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 separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

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

_____ 3/15/2011
For the Executive Director 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.

Bradley Bailey 1-14-11
Signature Date

BRADLEY BAILEY VICE PRESIDENT
Name (Printed or typed) Title
Authorized Representative of
BAILEY BARK MATERIALS, INC.

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.