

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 42490
SANDY KOWALICK AND SOUTHEAST TEXAS TREES LLC
RN104443072
Docket No. 2011-1629-MSW-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

18963 Trails End, Conroe, Montgomery County

Type of Operation:

vegetative waste recycling facility

Other Significant Matters:

| | |
|---|------|
| Additional Pending Enforcement Actions: | None |
| Past-Due Penalties: | None |
| Past-Due Fees: | None |
| Other: | None |
| Interested Third-Parties: | None |

Texas Register Publication Date: December 7, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$16,800

Total Paid to General Revenue: \$490

Total Due to General Revenue: \$16,310

Payment Plan: 35 payments of \$466 each

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN –Average
Site/RN –Average

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: June 7, 2011
Date(s) of NOV(s): January 24, 2008; July 22, 2009
Date(s) of NOE(s): September 18, 2011

Violation Information

Failed to prevent the unauthorized disposal of municipal solid waste ("MSW") (approx. 37,500 cu/yds of ash, mulch, and logs; 400 cu/yds of vegetative waste; 100 cu/yds of construction and demolition debris; and 20 cu/yds of scrap tires) [30 TEX. ADMIN. CODE § 330.15(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

All MSW was removed from the Facility by December 20, 2011.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: March 6, 2012
Date Answer(s) Filed: March 22, 2012
SOAH Referral Date: May 15, 2012
Hearing Date(s):
Preliminary Hearing: July 12, 2012
Evidentiary Hearing: November 8, 2012 (scheduled)
Settlement Date: November 6, 2012

Contact Information

TCEQ Attorneys: Jeffrey Huhn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
James Murphy, Public Interest Counsel, (512) 239-6363

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Keith Frank, Enforcement Division, (512) 239-1203

TCEQ Regional Contact: Nicole Bealle, Houston Regional Office, (713) 767-3500

Respondent: Sandy Kowalick, President, Southeast Texas Trees LLC, 14805 Marina Drive, Montgomery, Texas 77385

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned | 29-Aug-2011 | Screening | 30-Aug-2011 | EPA Due | |
| | PCW | 2-Nov-2012 | | | | |

RESPONDENT/FACILITY INFORMATION

| | | | |
|-----------------------------|--|---------------------------|-------|
| Respondent | Sandy Kowalick and Southeast Texas Trees LLC | | |
| Reg. Ent. Ref. No. | RN104443072 | | |
| Facility/Site Region | 12-Houston | Major/Minor Source | Minor |

CASE INFORMATION

| | | | |
|--|-----------------------|------------------------------|--------------------|
| Enf./Case ID No. | 42490 | No. of Violations | 1 |
| Docket No. | 2011-1629-MSW-E | Order Type | Findings |
| Media Program(s) | Municipal Solid Waste | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Keith Frank |
| | | EC's Team | Enforcement Team 7 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$10,000 |

Penalty Calculation Section

| | | |
|---|-------------------|----------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$15,000 |
|---|-------------------|----------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|-------------------|--------------------------------|---------|
| Compliance History | 12.0% Enhancement | Subtotals 2, 3, & 7 | \$1,800 |
|---------------------------|-------------------|--------------------------------|---------|

| | |
|--------------|---|
| Notes | Enhancement for two NOVs with same/similar violations and one NOV with dissimilar violations. |
|--------------|---|

| | | | | |
|--------------------|----|------------------|-------------------|-----|
| 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 | \$10,467 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$389,838 | |

| | | |
|-----------------------------|-----------------------|----------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$16,800 |
|-----------------------------|-----------------------|----------|

| | | | |
|---|------|-------------------|--|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 0.0% | Adjustment | |
|---|------|-------------------|--|

Reduces or enhances the Final Subtotal by the indicated percentage.

| | |
|--------------|--|
| Notes | |
|--------------|--|

| | |
|-----------------------------|----------|
| Final Penalty Amount | \$16,800 |
|-----------------------------|----------|

| | | |
|-----------------------------------|-------------------------------|----------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$16,800 |
|-----------------------------------|-------------------------------|----------|

| | | | | |
|-----------------|------|-----------|-------------------|-----|
| DEFERRAL | 0.0% | Reduction | Adjustment | \$0 |
|-----------------|------|-----------|-------------------|-----|

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

| | |
|--------------|---|
| Notes | No deferral is recommended for Findings Orders. |
|--------------|---|

| | |
|------------------------|----------|
| PAYABLE PENALTY | \$16,800 |
|------------------------|----------|

Screening Date 30-Aug-2011

Docket No. 2011-1629-MSW-E

PCW

Respondent Sandy Kowalick and Southeast Texas Trees LLC
Case ID No. 42490

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104443072
Media [Statute] Municipal Solid Waste
Enf. Coordinator Keith Frank

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 (<i>number of NOVs meeting criteria</i>) | 2 | 10% |
| | Other written NOVs | 1 | 2% |
| Orders | Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (<i>number of counts</i>) | 0 | 0% |
| Emissions | Chronic excessive emissions events (<i>number of events</i>) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>) | 0 | 0% |

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 12%

>> **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 NOVs with same/similar violations and one NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 12%

Screening Date 30-Aug-2011

Docket No. 2011-1629-MSW-E

PCW

Respondent Sandy Kowalick and Southeast Texas Trees LLC
Case ID No. 42490
Reg. Ent. Reference No. RN104443072
Media [Statute] Municipal Solid Waste
Enf. Coordinator Keith Frank

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

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 330.15(c)

Violation Description

Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 37,500 cubic yards of ash, mulch, and logs, 400 cubic yards of vegetative waste, 100 cubic yards of construction and demolition debris, and 20 cubic yards of scrap tires were disposed of at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor). Actual Major has an 'x'.

Percent 50%

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor. All cells are empty.

Percent 0%

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 3

84 Number of violation days

Table with frequency options: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$15,000

Three monthly events are recommended based on documentation of the violation during the June 7, 2011 investigation to the August 30, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts to Comply with columns: Extraordinary, Ordinary, N/A. N/A is marked with an 'x'.

Notes

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

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$10,467

Violation Final Penalty Total \$16,800

This violation Final Assessed Penalty (adjusted for limits) \$16,800

Economic Benefit Worksheet

Respondent Sandy Kowalick and Southeast Texas Trees LLC
Case ID No. 42490
Reg. Ent. Reference No. RN104443072
Media Violation No. 1

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

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

Delayed Costs

| | | | | | | | |
|--------------------------|-----------|------------|-------------|------|----------|-----|----------|
| Equipment | | | | 0.00 | \$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 | \$389,838 | 7-Jun-2011 | 20-Dec-2011 | 0.54 | \$10,467 | n/a | \$10,467 |
| 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 approximately 38,020 cubic yards of MSW at an authorized facility. Date Required is the investigation date. Final Date is the 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

\$389,838

TOTAL

\$10,467

Compliance History

| | | | | |
|---|-------------------------------------|-----------------------|-------------------------|-------------------|
| Customer/Respondent/Owner-Operator: | CN602733099 | Sandy Kowalick | Classification: AVERAGE | Rating: 1.50 |
| Regulated Entity: | RN104443072 | Southeast Texas Trees | Classification: AVERAGE | Site Rating: 1.50 |
| ID Number(s): | MUNICIPAL SOLID WASTE NON PERMITTED | | ID NUMBER | 455120109 |
| | MUNICIPAL SOLID WASTE PROCESSING | | PERMIT | 100079 |
| Location: | 18963 TRAILS END, CONROE 77384 | | | |
| TCEQ Region: | REGION 12 - HOUSTON | | | |
| Date Compliance History Prepared: | October 05, 2011 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | August 17, 2006 to August 17, 2011 | | | |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History | | | | |
| Name: | Wallace Myers | Phone: | 512-239-6580 | |

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? Yes
3. If Yes, who is the current owner/operator? OWN Southeast Texas Trees LLC
4. If Yes, who was/were the prior owner(s)/operator(s)? OWN Sandy Kowalick
5. When did the change(s) in owner or operator occur? 08/17/2011 OWN Sandy Kowalick
6. Rating Date: 9/1/2010 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 01/24/2008 (609032)
 - 2 07/22/2009 (761565)
 - 3 12/09/2009 (784788)
 - 4 08/05/2011 (943926)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 01/24/2008 (609032)

| | | |
|--------------|--|--------------------------|
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 330, SubChapter A 330.15(c) | |
| Description: | During the investigation, approximately 12,000 to 15,000 cubic yards of material was noted to be on-site, the majority of this material was unprocessed. The facility contact indicated that the accumulation of material currently on-site started before 2004, the year the company changed ownership to the current personnel. A person may not cause, suffer, allow, or permit the dumping or disposal of municipal solid waste without the written authorization of the commission. | |

Date: 07/22/2009 (761565)

| | | |
|--------------|--|--------------------------|
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 330, SubChapter A 330.15(c) | |
| Description: | During the investigation, approximately 12,000 to 15,000 cubic yards of material was noted to be on-site, the majority of this material was unprocessed. The facility contact indicated that the accumulation of material currently on-site started before 2004, the year the company changed ownership to the current personnel. A person may not cause, suffer, allow, or permit the dumping or disposal of municipal solid waste without the written authorization of the commission. | |

Date: 06/22/2011 (924432)

| | | |
|--------------|--|--------------------------|
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 111, SubChapter B 111.201 5C THSC Chapter 382 382.085(b) | |
| Description: | RE conducted unauthorized burning on site. This is a category B19g(1) violation. | |
 - 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

Compliance History

| | | | | |
|---|--|---------------------------|-------------------------|-------------------|
| Customer/Respondent/Owner-Operator: | CN603948753 | Southeast Texas Trees LLC | Classification: AVERAGE | Rating: 1.80 |
| Regulated Entity: | RN104443072 | Southeast Texas Trees | Classification: AVERAGE | Site Rating: 1.80 |
| ID Number(s): | MUNICIPAL SOLID WASTE NON PERMITTED | | ID NUMBER | 455120109 |
| | MUNICIPAL SOLID WASTE PROCESSING | | PERMIT | 100079 |
| Location: | 18963 TRAILS END, CONROE 77384 | | | |
| TCEQ Region: | REGION 12 - HOUSTON | | | |
| Date Compliance History Prepared: | September 15, 2011 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | September 01, 2006 to September 01, 2011 | | | |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History | | | | |
| Name: | Wallace Myers | Phone: | 512-239-6580 | |

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? Yes
3. If Yes, who is the current owner/operator? OWN Southeast Texas Trees LLC
4. If Yes, who was/were the prior owner(s)/operator(s)? OWN Sandy Kowalick
5. When did the change(s) in owner or operator occur? 08/17/2011 OWN Sandy Kowalick
6. Rating Date: 9/1/2010 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 01/24/2008 (609032)
 - 2 07/22/2009 (761565)
 - 3 12/09/2009 (784788)
 - 4 08/05/2011 (943926)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 01/24/2008 (609032)

| | | |
|--------------|--|--------------------------|
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 330, SubChapter A 330.15(c) | |
| Description: | During the investigation, approximately 12,000 to 15,000 cubic yards of material was noted to be on-site, the majority of this material was unprocessed. The facility contact indicated that the accumulation of material currently on-site started before 2004, the year the company changed ownership to the current personnel. A person may not cause, suffer, allow, or permit the dumping or disposal of municipal solid waste without the written authorization of the commission. | |

Date: 07/22/2009 (761565)

| | | |
|--------------|--|--------------------------|
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| Citation: | 30 TAC Chapter 330, SubChapter A 330.15(c) | |
| Description: | During the investigation, approximately 12,000 to 15,000 cubic yards of material was noted to be on-site, the majority of this material was unprocessed. The facility contact indicated that the accumulation of material currently on-site started before 2004, the year the company changed ownership to the current personnel. A person may not cause, suffer, allow, or permit the dumping or disposal of municipal solid waste without the written authorization of the commission. | |

Date: 06/22/2011 (924432)

| | | |
|--------------|--|--------------------------|
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 111, SubChapter B 111.201 5C THSC Chapter 382 382.085(b) | |
| Description: | RE conducted unauthorized burning on site. This is a category B19g(1) violation. | |
 - 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
SANDY KOWALICK AND
SOUTHEAST TEXAS TREES LLC;
RN104443072**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2011-1629-MSW-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Sandy Kowalick and Southeast Texas Trees LLC ("Respondents") under the authority of TEX. WATER CODE ch. 7 and TEXAS HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondents presented this Agreed Order to the Commission.

Respondents understand that they have certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondents agree to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Respondents.

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

FINDINGS OF FACT

1. Respondents own and operate a vegetative waste recycling facility at 18963 Trails End in Conroe, Montgomery County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on June 7, 2011, a TCEQ Houston Regional Office investigator documented that Respondents failed to prevent the unauthorized disposal of MSW. Specifically, approximately 37,500 cubic yards of ash, mulch, and logs, 400 cubic yards of vegetative waste, 100 cubic yards of construction and demolition debris and 20 cubic yards of scrap tires were disposed of at the Facility.
3. Respondents received notice of the violation on or about September 23, 2011.
4. The Executive Director recognizes that Respondents removed all MSW from the Facility prior to December 20, 2011.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEXAS HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondents failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of sixteen thousand eight hundred dollars (\$16,800.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondents paid four hundred ninety dollars (\$490.00) of the administrative penalty. The remaining amount of sixteen thousand three hundred ten dollars (\$16,310.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of four hundred sixty-six dollars (\$466.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondents fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondents' failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondents to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

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

1. Respondents are assessed an administrative penalty as set forth in Conclusion of Law No. 4, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Sandy Kowalick and Southeast Texas Trees LLC, Docket No. 2011-1629-MSW-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
2. All relief not expressly granted in this Agreed Order is denied.
3. The provisions of this Agreed Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If Respondents fail 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, Respondents' failure to comply is not a violation of this Agreed Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order 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.
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondents, or three days after the date on which the Commission mails notice of this Agreed Order to Respondents, 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



For the Executive Director

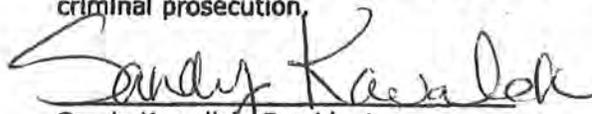
January 11, 2013
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Sandy Kowalick and Southeast Texas Trees LLC, 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 in this Agreed 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



Sandy Kowalick, President
Southeast Texas Trees LLC

11-6-2012
Date



Sandy Kowalick

11-6-2012
Date