

Executive Summary – Enforcement Matter – Case No. 50517
CECIL THOMPSON TREE SERVICE, INC.
RN108161928
Docket No. 2015-0717-MSW-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Cecil Thompson Tree Service, 9807 Dessau Road, Austin, Travis County

Type of Operation:

Brush recycling and mulching facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: October 2, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$7,689

Amount Deferred for Expedited Settlement: \$1,537

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$202

Total Due to General Revenue: \$5,950

Payment Plan: 35 payments of \$170 each

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - N/A

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Executive Summary – Enforcement Matter – Case No. 50517
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RN108161928
Docket No. 2015-0717-MSW-E

Investigation Information

Complaint Date(s): February 4, 2015

Complaint Information: Alleged the Respondent was operating without authorization.

Date(s) of Investigation: March 3, 2015

Date(s) of NOE(s): May 1, 2015

Violation Information

1. Failed to submit a Notice of Intent within 90 days of the effective date of 30 TEX. ADMIN. CODE § 328.5. Specifically, the Respondent was storing and processing brush without providing prior notice to the TCEQ [30 TEX. ADMIN. CODE § 328.5(b)].
2. Failed to maintain a fire prevention and suppression plan and make it available to the local fire prevention authority [30 TEX. ADMIN. CODE § 328.5(h)].
3. Failed to maintain financial assurance adequate for closure of a recycling facility. Specifically, financial assurance was not provided for approximately 5,413 cubic yards of combustible material [30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d)].
4. Failed to maintain the setback distance of at least 50 feet from all property boundaries for storing mulched and/or composted, including in-process and processed, materials [30 TEX. ADMIN. CODE § 332.8(b)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent reduced the amount of mulched and/or composted, including in-process and processed, materials to less than 2,000 cubic yards; therefore, the Respondent is no longer required to maintain the setback distance of at least 50 feet.

Technical Requirements:

The Order will require the Respondent to:

- a. Immediately, cease accepting additional recyclable materials until such time that all requirements of a Notice of Intent for the Facility have been approved by the Executive Director;
- b. Within 30 days, begin maintaining a fire prevention and suppression plan and make it available to the local fire prevention authority; and
- c. Within 60 days, submit documentation that demonstrates acceptable financial assurance for closure of the Facility.

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Docket No. 2015-0717-MSW-E**

In lieu of a. through c.:

- d. Within 90 days, remove all recyclable materials to an authorized facility; and
- e. Within 105 days, submit written certification to demonstrate compliance with a. through c., or d.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Rebecca Boyett, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-2503; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456
TCEQ SEP Coordinator: N/A
Respondent: Robert Rose, President, CECIL THOMPSON TREE SERVICE, INC., 9807 Dessau Road, Austin, Texas 78753
Respondent's Attorney: Shana Horton, Smiley Law Firm, P.C., 6000 Shepherd Mountain Cove, Suite 2017, Austin, Texas 78730



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	4-May-2015	Screening	8-May-2015	EPA Due	
	PCW	31-Jul-2015				

RESPONDENT/FACILITY INFORMATION

Respondent	CECIL THOMPSON TREE SERVICE, INC.				
Reg. Ent. Ref. No.	RN108161928				
Facility/Site Region	11-Austin	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	50517	No. of Violations	4
Docket No.	2015-0717-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rebecca Boyett
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts	\$3,632	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$6,299	

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 8-May-2015

Docket No. 2015-0717-MSW-E

PCW

Respondent CECIL THOMPSON TREE SERVICE, INC.

Policy Revision 4 (April 2014)

Case ID No. 50517

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN108161928

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rebecca Boyett

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>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments 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) 0%

>> **Repeat Violator (Subtotal 3)**

N/A

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 0%

Screening Date 8-May-2015

Docket No. 2015-0717-MSW-E

PCW

Respondent CECIL THOMPSON TREE SERVICE, INC.

Policy Revision 4 (April 2014)

Case ID No. 50517

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN108161928

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rebecca Boyett

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 328.5(b)

Violation Description

Failed to submit a Notice of Intent ("NOI") within 90 days of the effective date of 30 Tex. Admin. Code § 328.5. Specifically, the Respondent was storing and processing brush without providing prior notice to the TCEQ.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3

66 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

Three monthly events are recommended from the March 3, 2015 investigation date to May 8, 2015 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$232

Violation Final Penalty Total \$3,910

This violation Final Assessed Penalty (adjusted for limits) \$3,910

Economic Benefit Worksheet

Respondent CECIL THOMPSON TREE SERVICE, INC.
Case ID No. 50517
Reg. Ent. Reference No. RN108161928
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	\$5,000	3-Mar-2015	4-Feb-2016	0.93	\$232	n/a	\$232
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit an NOI to conduct recycling activities. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$5,000

TOTAL \$232

Screening Date 8-May-2015

Docket No. 2015-0717-MSW-E

PCW

Respondent CECIL THOMPSON TREE SERVICE, INC.

Policy Revision 4 (April 2014)

Case ID No. 50517

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN108161928

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rebecca Boyett

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 328.5(h)

Violation Description

Failed to maintain a fire prevention and suppression plan and make it available to the local fire prevention authority.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

66 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One quarterly event is recommended from the March 3, 2015 investigation date to the May 8, 2015 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23

Violation Final Penalty Total \$1,303

This violation Final Assessed Penalty (adjusted for limits) \$1,303

Economic Benefit Worksheet

Respondent CECIL THOMPSON TREE SERVICE, INC.
Case ID No. 50517
Reg. Ent. Reference No. RN108161928
Media Municipal Solid Waste
Violation No. 2

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)	\$500	3-Mar-2015	4-Feb-2016	0.93	\$23	n/a	\$23

Notes for DELAYED costs

Estimated cost to maintain a fire prevention and suppression plan and make it available to the local fire prevention authority. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$23

Screening Date 8-May-2015

Docket No. 2015-0717-MSW-E

PCW

Respondent CECIL THOMPSON TREE SERVICE, INC.

Policy Revision 4 (April 2014)

Case ID No. 50517

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN108161928

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rebecca Boyett

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 37.921 and 328.5(d)

Violation Description Failed to maintain financial assurance adequate for closure of a recycling facility. Specifically, financial assurance was not provided for approximately 5,413 cubic yards of combustible material.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (5.0%).

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 365

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event. 'x' is marked under 'single event'.

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A. 'x' is marked under 'N/A'.

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$314

Violation Final Penalty Total \$1,303

This violation Final Assessed Penalty (adjusted for limits) \$1,303

Economic Benefit Worksheet

Respondent CECIL THOMPSON TREE SERVICE, INC.
Case ID No. 50517
Reg. Ent. Reference No. RN108161928
Media Municipal Solid Waste
Violation No. 3

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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

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]	\$299	3-Mar-2014	3-Mar-2015	1.00	\$15	\$299	\$314
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to obtain financial assurance. The Date Required is one year prior to the investigation date and the Final Date is the investigation date.

Approx. Cost of Compliance \$299

TOTAL \$314

Screening Date 8-May-2015

Docket No. 2015-0717-MSW-E

PCW

Respondent CECIL THOMPSON TREE SERVICE, INC.

Policy Revision 4 (April 2014)

Case ID No. 50517

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN108161928

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rebecca Boyett

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 332.8(b)(1)

Violation Description

Failed to maintain the setback distance of at least 50 feet from all property boundaries for storing mulched and/or composted, including in-process and processed, materials.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

66 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One quarterly event is recommended from the March 3, 2015 investigation date to the May 8, 2015 screening date.

Good Faith Efforts to Comply

10.0%

Reduction \$125

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

Notes

The Respondent achieved compliance on May 22, 2015 after the Notice of Enforcement dated May 1, 2015.

Violation Subtotal \$1,125

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$1,173

This violation Final Assessed Penalty (adjusted for limits) \$1,173

Economic Benefit Worksheet

Respondent CECIL THOMPSON TREE SERVICE, INC.

Case ID No. 50517

Reg. Ent. Reference No. RN108161928

Media Municipal Solid Waste

Violation No. 4

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)	\$500	3-Mar-2015	22-May-2015	0.22	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to maintain the minimum setback distance of 50 feet, or reduce the amount of mulched and/or composted, including in-process and processed, materials to less than 2,000 cubic yards. The Date Required is the investigation date and the 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

\$500

TOTAL

\$5

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN604770842, RN108161928, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN604770842, CECIL THOMPSON TREE SERVICE, INC. **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN108161928, Cecil Thompson Tree Service **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 12 - Agriculture, Forestry, Fishing, and Hunting

Location: 9807 DESSAU RD AUSTIN, TX 78754-3942, TRAVIS COUNTY

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER
R11108161928

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: May 12, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 08, 2010 to May 08, 2015

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Rebecca Boyett

Phone: (512) 239-2503

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:
N/A

B. Criminal convictions:
N/A

C. Chronic excessive emissions events:
N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):
N/A

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

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
CECIL THOMPSON TREE
SERVICE, INC.
RN108161928

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2015-0717-MSW-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding CECIL THOMPSON TREE SERVICE, INC. ("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, represented by Shana Horton of the law firm of Smiley Law Firm, P.C., together stipulate that:

1. The Respondent owns and operates a brush recycling and mulching facility at 9807 Dessau Road in Austin, Travis 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.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 6, 2015.
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 Seven Thousand Six Hundred Eighty-Nine Dollars (\$7,689) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondent has paid Two Hundred Two Dollars (\$202) of the administrative penalty and One Thousand Five Hundred Thirty-Seven Dollars (\$1,537) 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 Five Thousand Nine Hundred Fifty Dollars (\$5,950) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Seventy Dollars (\$170) 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 and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent reduced the amount of mulched and/or composted, including in-process and processed, materials to less than 2,000 cubic yards; therefore, the Respondent is no longer required to maintain the setback distance of at least 50 feet, in accordance with 30 TEX. ADMIN. CODE § 332.8.
10. 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.
11. 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.
12. 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 submit a Notice of Intent ("NOI") within 90 days of the effective date of 30 TEX. ADMIN. CODE § 328.5, in violation of 30 TEX. ADMIN. CODE § 328.5(b), as documented during an investigation conducted on March 3, 2015. Specifically, the Respondent was storing and processing brush without providing prior notice to the TCEQ.
2. Failed to maintain a fire prevention and suppression plan and make it available to the local fire prevention authority, in violation of 30 TEX. ADMIN. CODE § 328.5(h), as documented during an investigation conducted on March 3, 2015.
3. Failed to maintain financial assurance adequate for closure of a recycling facility, in violation of 30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d), as documented during an investigation conducted on March 3, 2015. Specifically, financial assurance was not provided for approximately 5,413 cubic yards of combustible material.
4. Failed to maintain the setback distance of at least 50 feet from all property boundaries for storing mulched and/or composted, including in-process and processed, materials, in violation of 30 TEX. ADMIN. CODE § 332.8(b)(1), as documented during an investigation conducted on March 3, 2015.

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: CECIL THOMPSON TREE SERVICE, INC., Docket No. 2015-0717-MSW-E" to:

Financial Administration Division, Revenue Operations 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 additional recyclable materials until such time that all requirements of an NOI for the Facility have been approved by the Executive Director;

- b. Within 30 days after the effective date of this Agreed Order begin maintaining a fire prevention and suppression plan and make it available to the local fire prevention authority, in accordance with 30 TEX. ADMIN. CODE § 328.5; and
- c. Within 60 days after the effective date of this Agreed Order, submit documentation that demonstrates acceptable financial assurance for closure of the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 37.921 and 328.5.

In lieu of Ordering Provision Nos. 2.a. through 2.c.:

- d. Within 90 days after the effective date of this Agreed Order, remove all recyclable materials to an authorized facility.
- e. Within 105 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.c., or 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
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- 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. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]
For the Executive Director

12/4/15
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.

Robert Rose
Signature

8-17-15
Date

Robert Rose
Name (Printed or typed)
Authorized Representative of
CECIL THOMPSON TREE SERVICE, INC.

Pres.
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.