

Sienna Mulch, Inc.
RN104298302
Docket No. 2013-1135-MSW-E

Order Type:

Agreed Order

Media:

MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

9615 Farm-to-Market Road 521, Rosharon, Fort Bend County

Type of Operation:

wood 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: September 12, 2014

Comments Received: None

Penalty Information

Total Penalty Assessed: \$24,987

Total Paid to General Revenue: \$697

Total Due to General Revenue: \$24,290

Payment Plan: 35 payments of \$694 each

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – High
 Site/RN – High

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): April 9, 2013

Complaint Information: Alleged a lot of brush stored on-site and none has been ground into mulch in the last year.

Date(s) of Investigation: April 16, 2013

Date(s) of NOV(s): N/A

Date(s) of NOE(s): June 6, 2013

Sienna Mulch, Inc.
RN104298302
Docket No. 2013-1135-MSW-E

Violation Information

1. Failed to provide financial assurance for the closure of a recycling facility that stores combustible material outdoors [30 TEX. ADMIN. CODE §§ 328.5(d) and 332.3(d)(3)].
2. Failed to recycle during each subsequent six-month period at least 50% by weight or volume of material accumulated at the Facility for recycling or transfer to a different site for recycling [30 TEX. ADMIN. CODE §§ 328.4(b)(3), 328.5(f)(1) and 332.3(d)(3)].
3. Failed to report any updates or changes to information contained in the site report within 90 days of the effective date of the change [30 TEX. ADMIN. CODE §§ 328.5(b)(4) and 332.3(d)(3)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Updated the Facility's Notice of Intent as of June 3, 2013.

Technical Requirements:

1. Within 30 days:
 - a. Submit documentation to demonstrate acceptable financial assurance for the closure of the Facility;
 - b. Recycle or transfer to a different site for recycling stored quantities of recyclable materials to the maximum amounts specified in the Facility's updated NOI; and
 - c. Develop and implement procedures to meet the recycling rates relating to limitations on storage of recyclable materials.
2. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: October 25, 2013
Date Answer(s) Filed: November 25, 2013
SOAH Referral Date: December 31, 2013
Hearing Date(s):
Preliminary hearing: February 13, 2014 (waived)
Evidentiary hearing: June 5, 2014 (continued); August 19, 2014 (scheduled)
Settlement Date: August 15, 2014

Contact Information

TCEQ Attorneys: Jennifer Cook, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Eli Martinez, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Mike Pace, Enforcement Division, (817) 588-5933
TCEQ Regional Contact: Jason Ybarra, Houston Regional Office, (713) 767-3500
Respondent: Mario Cebolao, Jr., Director, Sienna Mulch, Inc., 4334 Crow Valley Drive, Missouri City, Texas 77459
Respondent's Attorney: Steve M. Williard, The Williard Law Firm, L.P., 1920 North Memorial Way, Suite 207, Houston, Texas 77007



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	10-Jun-2013		
	PCW	13-Aug-2014	Screening	11-Jun-2013
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Sienna Mulch, Inc.
Reg. Ent. Ref. No.	RN104298302
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	47038	No. of Violations	3
Docket No.	2013-1135-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Mike Pace
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$6,250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1	
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
Compliance History	Subtotals 2, 3, & 7
-10.0% Reduction	-\$625

Notes	Reduction for high performer classification.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$312
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Economic Benefit	50.0% Enhancement*	Subtotal 6	\$3,125
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Total EB Amounts	\$23,840	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$131,460	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,438
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OTHER FACTORS AS JUSTICE MAY REQUIRE	196.1%	Adjustment	\$16,549
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1 (\$19,674). The Executive Director recommends a downward adjustment to offset the enhancement for economic benefit (\$3,125).
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Final Penalty Amount	\$24,987
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$24,987
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$24,987
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Screening Date 11-Jun-2013

Docket No. 2013-1135-MSW-E

PCW

Respondent Sienna Mulch, Inc.

Policy Revision 3 (September 2011)

Case ID No. 47038

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104298302

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

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 judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Reduction for high performer classification.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date 11-Jun-2013 **Docket No.** 2013-1135-MSW-E **PCW**
Respondent Sienna Mulch, Inc. *Policy Revision 3 (September 2011)*
Case ID No. 47038 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN104298302
Media [Statute] Municipal Solid Waste
Enf. Coordinator Mike Pace

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 328.5(d) and 332.3(d)(3)

Violation Description

Failed to provide financial assurance for the closure of the recycling facility that stores combustible material outdoors. Specifically, financial assurance was not provided for approximately 41,000 cubic yards of municipal solid waste ("MSW").

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 1 365 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$1,250

One annual event is recommended for the 12-month period preceding the April 16, 2013 investigation 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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19,674

Violation Final Penalty Total \$5,182

This violation Final Assessed Penalty (adjusted for limits) \$5,182

Economic Benefit Worksheet

Respondent Sienna Mulch, Inc.
Case ID No. 47038
Reg. Ent. Reference No. RN104298302
Media 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)				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]	\$18,737	16-Apr-2012	16-Apr-2013	1.00	\$937	\$18,737	\$19,674
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost of obtaining financial assurance for the closure of the Facility. The date required is one year prior to the investigation date, and the final date is the investigation date.

Approx. Cost of Compliance \$18,737

TOTAL \$19,674

Screening Date 11-Jun-2013

Docket No. 2013-1135-MSW-E

PCW

Respondent Sienna Mulch, Inc.

Policy Revision 3 (September 2011)

Case ID No. 47038

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104298302

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §§ 328.4(b)(3), 328.5(f)(1) and 332.3(d)(3)

Violation Description

Failed to recycle during each subsequent six-month period at least 50% by weight or volume of material accumulated at the Facility for recycling or transfer to a different site for recycling. Specifically, the Respondent recycled only 24% of the material at the Facility during the period from October 16, 2012 to April 16, 2013.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

182 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	x
annual	
single event	

Violation Base Penalty \$3,750

One semiannual event is recommended for the six-month period from October 16, 2012 to April 16, 2013.

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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4,166

Violation Final Penalty Total \$15,547

This violation Final Assessed Penalty (adjusted for limits) \$15,547

Economic Benefit Worksheet

Respondent Sienna Mulch, Inc.
Case ID No. 47038
Reg. Ent. Reference No. RN104298302
Media Violation No. Municipal Solid Waste
 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	\$112,123	16-Apr-2013	11-Jan-2014	0.74	\$4,147	n/a	\$4,147
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	16-Apr-2013	11-Jan-2014	0.74	\$18	n/a	\$18

Notes for DELAYED costs

Estimated cost to remove and properly dispose of or recycle and reduce stored quantities of recyclable material to the maximum amounts specified in the Facility's updated Notice of Intent ("NOI") or transfer to a different site for recycling (\$112,123) and develop and implement procedures to meet the recycling rates relating to the limitations on storage of recyclable material at the Facility (\$500). The date required is the investigation date, and the final date is the expected compliance date.

Avoided Costs

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

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 \$112,623

TOTAL \$4,166

Screening Date 11-Jun-2013

Docket No. 2013-1135-MSW-E

PCW

Respondent Sienna Mulch, Inc.

Policy Revision 3 (September 2011)

Case ID No. 47038

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104298302

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code §§ 328.5(b)(4) and 332.3(d)(3)

Violation Description

Failed to report any updates or changes to information contained in the site report within 90 days of the effective date of the change. Specifically, the Facility's NOI was not updated to indicate operator change from Lisbon Inc. to Sienna Mulch, Inc and the volume of material to be kept on-site.

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 1

48 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$312

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

Notes

The Respondent came into compliance on June 3, 2013, prior to the Notice of Enforcement dated June 6, 2013.

Violation Subtotal \$938

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$4,258

This violation Final Assessed Penalty (adjusted for limits) \$4,258

Economic Benefit Worksheet

Respondent Sienna Mulch, Inc.
Case ID No. 47038
Reg. Ent. Reference No. RN104298302
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	\$100	16-Apr-2013	3-Jun-2013	0.13	\$1	n/a	\$1
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

Estimated cost to update the NOI. The date required is the investigation date, and the final date is the compliance date.

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

\$100

TOTAL

\$1

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.



Compliance History Report

PUBLISHED Compliance History Report for CN603685009, RN104298302, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN603685009, Sienna Mulch, Inc.

Classification: HIGH

Rating: 0.00

Regulated Entity: RN104298302, Sienna Mulch

Classification: HIGH

Rating: 0.00

Complexity Points: 2

Repeat Violator: NO

CH Group: 14 - Other

Location: 9615 FM RD 521 ROSHARON, TX 77583-4509, FORT BEND COUNTY

TCEQ Region: REGION 12 - HOUSTON

ID Number(s): **MUNICIPAL SOLID WASTE PROCESSING** REGISTRATION 100009
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 455120122

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: June 17, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: June 17, 2008 to June 17, 2013

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

Name: Mike Pace

Phone: (817) 588-5933

Site and Owner/Operator History:

- 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 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SIENNA MULCH, INC.;
RN104298302**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2013-1135-MSW-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Sienna Mulch, Inc. ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Steve M. Williard of the law firm The Williard Law Firm, L.P., together stipulate that:

1. Respondent owns and operates a wood recycling facility located at 9615 Farm-to-Market Road 521 in Rosharon, Fort Bend 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. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The TCEQ has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Executive Director and Respondent agree that TCEQ has jurisdiction to enter this Agreed Order, and that Respondent is subject to TCEQ's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of twenty-four thousand nine hundred eighty-seven dollars (\$24,987.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid six hundred ninety-seven dollars (\$697.00) of the administrative penalty. The remaining amount of twenty-four thousand two hundred ninety dollars (\$24,290.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of six hundred ninety-four dollars (\$694.00) 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 Respondent fails 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, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.
6. 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.

7. The Executive Director and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
8. 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 Respondent has not complied with one or more of the terms or conditions contained in this Agreed Order.
9. 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.
10. 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.
11. The Executive Director recognizes that Respondent updated the Facility's notice of intent (NOI) as of June 3, 2013.

II. ALLEGATIONS

1. During an investigation conducted on April 16, 2013, a TCEQ Houston Regional Office investigator documented that Respondent:
 - a. Failed to provide financial assurance for the closure of a recycling facility that stores combustible material outdoors, in violation of 30 TEX. ADMIN. CODE §§ 328.5(d) and 332.3(d)(3). Specifically, financial assurance was not provided for approximately 41,000 cubic yards of MSW at the Facility;
 - b. Failed to recycle during each subsequent six-month period at least 50% by weight or volume of material accumulated at the Facility for recycling or transfer to a different site for recycling, in violation of 30 TEX. ADMIN. CODE §§ 328.4(b)(3), 328.5(f)(1) and 332.3(d)(3). Specifically, Respondent recycled only 24% of the material at the Facility during the period from October 16, 2012 to April 16, 2013; and
 - c. Failed to report any updates or changes to information contained in the site report within 90 days of the effective date of the change, in violation of 30 TEX. ADMIN. CODE §§ 328.5(b)(4) and 332.3(d)(3). Specifically, the Facility's NOI was not updated to indicate operator change from Lisbon Inc. to Sienna Mulch, Inc. and the volume of material to be kept on-site.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and 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 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: Sienna Mulch, Inc., Docket No. 2013-1135-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. Respondent shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Agreed Order, Respondent shall:
 - i. Submit documentation to demonstrate acceptable financial assurance for the closure of the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 328.5(d) and 332.3(d)(3) to:

Financial Assurance Team, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - ii. Recycle or transfer to a different site for recycling stored quantities of recyclable materials to the maximum amounts specified in the Facility's updated NOI; and
 - iii. Develop and implement procedures to meet the recycling rates relating to limitations on storage of recyclable materials, in accordance with 30 TEX. ADMIN. CODE §§ 328.4(b)(3), 328.5(f)(1) and 332.3(d)(3).
 - b. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 2.a.i. through 2.a.iii. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Jason Ybarra, Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Street, Suite H
Houston TX 77023-1452

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is 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.
5. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed in Ordering Provision No. 2.b., above.
7. This Agreed Order, issued by the Commission, shall not be admissible against 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 TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
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 Respondent, or three days after the date on which the Commission mails a copy of the fully executed Agreed Order to Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

C. Duvency
For the Executive Director

October 8, 2014
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 Sienna Mulch, Inc., 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.

D. Ratliff
Signature

8-15-14
Date

David Ratliff
Name (Printed or typed)
Authorized representative of
Sienna Mulch, Inc.

PRESIDENT
Title