

Executive Summary – Enforcement Matter – Case No. 64185

B-TEXAS MULCH LLC

RN109981779

Docket No. 2023-0791-MSW-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

B-Texas Mulch JB Spicewood, 201 North Paleface Ranch Road, Spicewood, Travis County

Type of Operation:

Mulch recycling 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: September 27, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$8,564

Amount Deferred for Expedited Settlement: \$1,712

Total Paid to General Revenue: \$202

Total Due to General Revenue: \$6,650

Payment Plan: 35 payments of \$190 each

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): January 5, 2023

Complaint Information: Alleged excessive dust and odor from a nearby mulching operation.

Date(s) of Investigation: May 1, 2023

Date(s) of NOE(s): May 15, 2023

Executive Summary – Enforcement Matter – Case No. 64185

B-TEXAS MULCH LLC

RN109981779

Docket No. 2023-0791-MSW-E

Violation Information

1. Failed to provide an accurate estimate of closure cost for financial assurance ("FA") requirements for a facility that stores combustible materials outdoors. Specifically, the FA provided in the Notice of Intent issued on November 21, 2017, listed the maximum amount of combustible materials stored outdoors as 10,100 cubic yards; however, the Facility contained approximately 15,000 cubic yards of brush, logs, pallets, and mulch stored outdoors at the time of the investigation [30 TEX. ADMIN. CODE §§ 37.121 and 328.5(d) and (f)(3)].
2. Failed to maintain recycling records to show compliance with the requirements for limitations on storage of recyclable materials. Specifically, the Facility did not provide any documentation to demonstrate the amount of material recycled or transferred to another site for recycling equals at least 50% by weight or volume of the material accumulated at the beginning of the period [30 TEX. ADMIN. CODE § 328.5(f)(1)].
3. Failed to ensure that containers used to store used oil are in good condition and not leaking. Specifically, one 5-gallon bucket storing used oil at the Facility had a cracked lid and was leaking [30 TEX. ADMIN. CODE § 324.1 and 40 CODE OF FEDERAL REGULATIONS ("CFR") § 279.22(b)].
4. Failed to mark or clearly label used oil storage containers with the words "Used Oil". Specifically, three 5-gallon buckets at the Facility were not labeled with the words "Used Oil" [30 TEX. ADMIN. CODE § 324.6 and 40 CFR § 279.22(c)(1)].
5. Failed to clean up and properly manage used oil, which was released onto the ground. Specifically, approximately 0.2 cubic yards of contaminated soil was not properly cleaned up [30 TEX. ADMIN. CODE § 324.15 and 40 CFR § 279.22(d)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented the following corrective measures:

- a. By February 6, 2024, removed all soil stained by Used Oil from the Facility;
- b. By February 6, 2024, replaced the cracked and leaking 5-gallon bucket storing used oil;
- c. By February 6, 2024, labeled all used oil containers with the words "Used Oil";
- d. By March 1, 2024, began maintaining acceptable FA for closure of the Facility according to the MSW Permits Division; and

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B-TEXAS MULCH LLC

RN109981779

Docket No. 2023-0791-MSW-E

e. By June 24, 2024, began maintaining records of recycling activities that demonstrate the amount of material recycled or transferred to another site for recycling equals at least 50% by weight or volume of the material accumulated at the beginning of the period.

Technical Requirements:

N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Stephanie McCurley, Enforcement Division, Enforcement Team 3, MC 219, (512) 239-2607; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Jorge Burgos, Owner, B-TEXAS MULCH LLC, P.O. Box 342065, Austin, Texas 78734

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	16-May-2023	Screening	15-Jun-2023	EPA Due	
	PCW	3-Jul-2024				

RESPONDENT/FACILITY INFORMATION	
Respondent	B-TEXAS MULCH LLC
Reg. Ent. Ref. No.	RN109981779
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	64185	No. of Violations	2
Docket No.	2023-0791-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Used Oil	Enf. Coordinator	Stephanie McCurley
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,125
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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	5.0% Adjustment	Subtotals 2, 3, & 7	\$156
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Notes	Enhancement for one NOV with same/similar violations.
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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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$3,049	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$9,692	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,281
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OTHER FACTORS AS JUSTICE MAY REQUIRE	81.0%	Adjustment	\$2,658
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost associated with Violation No. 1.
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Final Penalty Amount	\$5,939
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,939
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DEFERRAL	20.0%	Reduction Adjustment	-\$1,187
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral offered for expedited settlement.
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PAYABLE PENALTY	\$4,752
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Screening Date 15-Jun-2023

Docket No. 2023-0791-MSW-E

PCW

Respondent B-TEXAS MULCH LLC

Policy Revision 5 (January 28, 2021)

Case ID No. 64185

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN109981779

Media Municipal Solid Waste

Enf. Coordinator Stephanie McCurley

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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>)	1	5%
	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%
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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 5%

Screening Date 15-Jun-2023
Respondent B-TEXAS MULCH LLC
Case ID No. 64185
Reg. Ent. Reference No. RN109981779
Media Municipal Solid Waste
Enf. Coordinator Stephanie McCurley

Docket No. 2023-0791-MSW-E

PCW

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

Violation Number

Rule Cite(s)

30 Tex. Admin. Code §§ 37.121 and 328.5(d) and (f)(3)

Violation Description

Failed to provide an accurate estimate of closure cost for financial assurance ("FA") requirements for a facility that stores combustible materials outdoors. Specifically, the FA provided in the Notice of Intent ("NOI") issued on November 21, 2017, listed the maximum amount of combustible materials stored outdoors as 10,100 cubic yards; however, the Facility contained approximately 15,000 cubic yards of brush, logs, pallets, and mulch stored outdoors at the time of the investigation.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>

Percent

Matrix Notes

30 to 70% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events Number of violation days

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	<input type="text"/>

Notes

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent B-Texas Mulch LLC
Case ID No. 64185
Reg. Ent. Reference No. RN109981779
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	Costs Saved	EB Amount
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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	\$500	13-Jan-2023	17-May-2023	0.34	\$8	n/a	\$8
Other (as needed)	\$6,125	13-Jan-2023	1-Mar-2024	1.13	\$347	n/a	\$347

Notes for DELAYED costs

Estimated delayed cost to update the NOI's cost estimate for closure of the Facility (\$500) and to revise the FA to include the additional 4,900 cubic yards of brush, logs, pallets, and mulch at the Facility (\$6,125). The Dates Required are the initial investigation date and the Final Dates are the dates of compliance.

Avoided Costs

ANNUALIZE 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	\$6,125	13-Jan-2023	15-Jun-2023	0.42	\$91	\$2,567	\$2,658
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to increase FA for the additional 4,900 cubic yards of brush, logs, pallets, and mulch stored outdoors at the Facility. The Date Required is the initial investigation date and the Final Date is the screening date.

Approx. Cost of Compliance \$9,192

TOTAL \$3,013

Screening Date 15-Jun-2023 **Docket No.** 2023-0791-MSW-E **PCW**
Respondent B-TEXAS MULCH LLC *Policy Revision 5 (January 28, 2021)*
Case ID No. 64185 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN109981779
Media Municipal Solid Waste
Enf. Coordinator Stephanie McCurley

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual	<input type="text"/>	<input type="text"/>	
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10.0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	<input type="text"/>

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent B-TEXAS MULCH LLC
Case ID No. 64185
Reg. Ent. Reference No. RN109981779
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	Costs Saved	EB Amount
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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	\$500	13-Jan-2023	24-Jun-2024	1.45	\$36	n/a	\$36
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 delayed cost to maintain records of recycling activities that demonstrate the amount of material recycled or transferred to another site for recycling equals at least 50% by weight or volume of the material accumulated at the beginning of the period. The Date Required is the initial investigation date and the Final Date is the date of compliance.						

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Notes for AVOIDED costs							

Approx. Cost of Compliance \$500

TOTAL \$36



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	16-May-2023	Screening	15-Jun-2023	EPA Due	
	PCW	3-Jul-2024				

RESPONDENT/FACILITY INFORMATION	
Respondent	B-TEXAS MULCH LLC
Reg. Ent. Ref. No.	RN109981779
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	64185	No. of Violations	3
Docket No.	2023-0791-MSW-E	Order Type	1660
Media Program(s)	Used Oil	Government/Non-Profit	No
Multi-Media	Municipal Solid Waste	Enf. Coordinator	Stephanie McCurley
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,500
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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	5.0% Adjustment	Subtotals 2, 3, & 7	\$125
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Notes	Enhancement for one NOV with same/similar violations.
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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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$13	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$222	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,625
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$2,625
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,625
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DEFERRAL	20.0%	Reduction	Adjustment	-\$525
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral offered for expedited settlement.
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PAYABLE PENALTY	\$2,100
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Screening Date 15-Jun-2023

Docket No. 2023-0791-MSW-E

PCW

Respondent B-TEXAS MULCH LLC

Policy Revision 5 (January 28, 2021)

Case ID No. 64185

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN109981779

Media Used Oil

Enf. Coordinator Stephanie McCurley

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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>)	1	5%
	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%
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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 5%

Screening Date	15-Jun-2023	Docket No.	2023-0791-MSW-E	PCW
Respondent	B-TEXAS MULCH LLC			<i>Policy Revision 5 (January 28, 2021)</i>
Case ID No.	64185			<i>PCW Revision February 11, 2021</i>
Reg. Ent. Reference No.	RN109981779			
Media	Used Oil			
Enf. Coordinator	Stephanie McCurley			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 324.1 and 40 Code of Federal Regulations ("CFR") § 279.22(b)			
Violation Description	Failed to ensure that containers used to store used oil are in good condition and not leaking. Specifically, one 5-gallon bucket storing used oil at the Facility had a cracked lid and was leaking.			
		Base Penalty	\$5,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual			x	Percent 15.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0.0%

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

Adjustment \$4,250
\$750

Violation Events

Number of Violation Events 1 45 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$750

One quarterly event is recommended from the May 1, 2023 record review date to the June 15, 2023 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	

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

Violation Subtotal \$750

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$3 **Violation Final Penalty Total** \$788

This violation Final Assessed Penalty (adjusted for limits) \$788

Economic Benefit Worksheet

Respondent B-TEXAS MULCH LLC
Case ID No. 64185
Reg. Ent. Reference No. RN109981779
Media Used Oil
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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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)	\$50	13-Jan-2023	6-Feb-2024	1.07	\$3	n/a	\$3

Notes for DELAYED costs

Estimated delayed cost to replace the cracked and leaking 5-gallon bucket storing used oil. The Date Required is the initial investigation date and the Final Date is the date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$50

TOTAL

\$3

Screening Date	15-Jun-2023	Docket No.	2023-0791-MSW-E	PCW
Respondent	B-TEXAS MULCH LLC			<i>Policy Revision 5 (January 28, 2021)</i>
Case ID No.	64185			<i>PCW Revision February 11, 2021</i>
Reg. Ent. Reference No.	RN109981779			
Media	Used Oil			
Enf. Coordinator	Stephanie McCurley			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 324.6 and 40 CFR § 279.22(c)(1)			
Violation Description	Failed to mark or clearly label used oil storage containers with the words "Used Oil". Specifically, three 5-gallon buckets at the Facility were not labeled with the words "Used Oil".			
		Base Penalty	\$5,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent 0.0%
Potential					

>> Programmatic Matrix

		Harm			
	Falsification	Major	Moderate	Minor	
		x			Percent 10.0%
Matrix Notes	100% of the rule requirement was not met.				
					Adjustment \$4,500

\$500

Violation Events

Number of Violation Events	2	45	Number of violation days	
	daily			Violation Base Penalty \$1,000
	weekly			
	monthly	x		
	quarterly			
	semiannual			
	annual			
	single event			
Two monthly events are recommended from the May 1, 2023 record review date to the June 15, 2023 screening date.				

Good Faith Efforts to Comply **0.0%** Reduction \$0

		Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer	
	Extraordinary			Violation Subtotal \$1,000
	Ordinary			
	N/A	x		
Notes	The Respondent does not meet the good faith criteria for this violation.			

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount	\$3	Violation Final Penalty Total	\$1,050
This violation Final Assessed Penalty (adjusted for limits)		\$1,050	

Economic Benefit Worksheet

Respondent B-TEXAS MULCH LLC
Case ID No. 64185
Reg. Ent. Reference No. RN109981779
Media Used Oil
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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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)	\$50	13-Jan-2023	6-Feb-2024	1.07	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to mark or clearly label all used oil containers with the words "Used Oil". The Date Required is the initial investigation date and the Final Date is the date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$50

TOTAL \$3

Screening Date 15-Jun-2023 **Docket No.** 2023-0791-MSW-E **PCW**
Respondent B-TEXAS MULCH LLC *Policy Revision 5 (January 28, 2021)*
Case ID No. 64185 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN109981779
Media Used Oil
Enf. Coordinator Stephanie McCurley

Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 324.15 and 40 CFR § 279.22(d)
Violation Description Failed to clean up and properly manage used oil, which was released onto the ground. Specifically, approximately 0.2 cubic yards of contaminated soil was not properly cleaned up.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			x	15.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

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

Adjustment \$4,250

\$750

Violation Events

Number of Violation Events 1 45 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$750

One quarterly event is recommended from the May 1, 2023 record review date to the June 15, 2023 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	

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

Violation Subtotal \$750

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$7 **Violation Final Penalty Total** \$788

This violation Final Assessed Penalty (adjusted for limits) \$788

Economic Benefit Worksheet

Respondent B-TEXAS MULCH LLC
Case ID No. 64185
Reg. Ent. Reference No. RN109981779
Media Used Oil
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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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)	\$122	13-Jan-2023	6-Feb-2024	1.07	\$7	n/a	\$7

Notes for DELAYED costs

Estimated avoided cost to remove all soil stained by Used Oil from the Facility. The Date Required is the initial investigation date and the Final Date is the date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$122

TOTAL

\$7



Compliance History Report

Compliance History Report for CN604906826, RN109981779, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator:	CN604906826, B-TEXAS MULCH LLC	Classification:	SATISFACTORY	Rating:	2.83
Regulated Entity:	RN109981779, B-Texas Mulch JB Spicewood	Classification:	SATISFACTORY	Rating:	2.83
Complexity Points:	6	Repeat Violator:	NO		
CH Group:	14 - Other				
Location:	201 North Paleface Ranch Road in Spicewood, Travis County, Texas				
TCEQ Region:	REGION 11 - AUSTIN				
ID Number(s):					
STORMWATER PERMIT TXR1589NZ	MUNICIPAL SOLID WASTE PROCESSING REGISTRATION				
		100504			
Compliance History Period:	September 01, 2018 to August 31, 2023	Rating Year:	2023	Rating Date:	09/01/2023
Date Compliance History Report Prepared:	December 13, 2023				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	December 13, 2018 to December 13, 2023				
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.					
Name:	Stephanie McCurley			Phone:	(512) 239-2607

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 |

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.

- | | | | | | |
|---|--------------|--|-----------|-----------------|----------|
| 1 | Date: | 02/27/2023 | (1868536) | | |
| | Self Report? | NO | | Classification: | Moderate |
| | Citation: | 30 TAC Chapter 328, SubChapter A 328.5(d) | | | |
| | Description: | Failure to maintain financial assurance in an amount sufficient to cover cost of facility closure. | | | |
| | Self Report? | NO | | Classification: | Moderate |
| | Citation: | 30 TAC Chapter 328, SubChapter A 328.5(f) | | | |

Description: Failure to provide records demonstrating the rate of recyclable material turnover.
Self Report? NO Classification: Moderate
Citation: 40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(b)
Description: Failure to store used oil in containers of good condition.
Self Report? NO Classification: Minor
Citation: 40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)
Description: Failure to label or mark containers of used oil with the words "Used Oil."
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 324, SubChapter A 324.15
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(d)
Description: Failure to immediately clean up and properly manage released used oil.

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
B-TEXAS MULCH LLC
RN109981779

§ BEFORE THE
§ TEXAS COMMISSION ON
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2023-0791-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 B-TEXAS MULCH LLC (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 371 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a mulch recycling facility located at 201 North Paleface Ranch Road in Spicewood, Travis County, Texas (the "Facility"). The Facility involves or involved the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361 and involves or involved the management of used oil as defined in TEX. HEALTH & SAFETY CODE ch. 371.
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE chs. 361 and 371 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$8,564 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$202 of the penalty and \$1,712 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions of this Order.

The remaining amount of \$6,650 of the undeferred penalty shall be paid in 35 monthly payments of \$190 each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If the Respondent fails to comply with the payment requirements of this Order, including the payment schedule, the Executive Director may accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. The Respondent's failure to meet the

payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms and conditions of this Order and the Executive Director may demand payment of all or part of the deferred penalty amount.

5. 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). 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.
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 the Respondent has not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Facility:
 - a. By February 6, 2024, removed all soil stained by Used Oil from the Facility;
 - b. By February 6, 2024, replaced the cracked and leaking 5-gallon bucket storing used oil;
 - c. By February 6, 2024, labeled all used oil containers with the words "Used Oil";
 - d. By March 1, 2024, began maintaining acceptable financial assurance for closure of the Facility according to the MSW Permits Division; and
 - e. By June 24, 2024, began maintaining records of recycling activities that demonstrate the amount of material recycled or transferred to another site for recycling equals at least 50% by weight or volume of the material accumulated at the beginning of the period.

II. ALLEGATIONS

During an investigation at the Facility conducted on January 13, 2023 and a record review for the Facility conducted on May 1, 2023, an investigator documented that the Respondent:

1. Failed to provide an accurate estimate of closure cost for financial assurance ("FA") requirements for a facility that stores combustible materials outdoors, in violation of 30 TEX. ADMIN. CODE §§ 37.121 and 328.5(d) and (f)(3). Specifically, the FA provided in the Notice of Intent issued on November 21, 2017, listed the maximum amount of combustible materials stored outdoors as 10,100 cubic yards; however, the Facility

contained approximately 15,000 cubic yards of brush, logs, pallets, and mulch stored outdoors at the time of the investigation.

2. Failed to maintain recycling records to show compliance with the requirements for limitations on storage of recyclable materials, in violation of 30 TEX. ADMIN. CODE § 328.5(f)(1). Specifically, the Facility did not provide any documentation to demonstrate the amount of material recycled or transferred to another site for recycling equals at least 50% by weight or volume of the material accumulated at the beginning of the period.
3. Failed to ensure that containers used to store used oil are in good condition and not leaking, in violation of 30 TEX. ADMIN. CODE § 324.1 and 40 CODE OF FEDERAL REGULATIONS ("CFR") § 279.22(b). Specifically, one 5-gallon bucket storing used oil at the Facility had a cracked lid and was leaking.
4. Failed to mark or clearly label used oil storage containers with the words "Used Oil", in violation of 30 TEX. ADMIN. CODE § 324.6 and 40 CFR § 279.22(c)(1). Specifically, three 5-gallon buckets at the Facility were not labeled with the words "Used Oil".
5. Failed to clean up and properly manage used oil, which was released onto the ground, in violation of 30 TEX. ADMIN. CODE § 324.15 and 40 CFR § 279.22(d). Specifically, approximately 0.2 cubic yards of contaminated soil was not properly cleaned up.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this 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. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: B-TEXAS MULCH LLC, Docket No. 2023-0791-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. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this 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.
5. This 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 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.
6. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.
7. 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

Date



For the Executive Director

10/11/2024

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, 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 OAG 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 OAG 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.



Signature

08/09/24

Date

JORGE BURGOS

Name (Printed or typed)
Authorized Representative of
B-TEXAS MULCH LLC

OWNER

Title

If mailing address has changed, please check this box and provide the new address below:

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