

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-0959-MLM-E TCEQ ID: RN102952785 CASE NO.: 25608
RESPONDENT NAME: DONALD BURKHARDT DBA CLEARWOOD RECYCLING CENTER

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input checked="" type="checkbox"/> USED OIL	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 9520 Easthaven Blvd., Houston, Harris County</p> <p>TYPE OF OPERATION: Recycling facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: One complaint was received. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: Representative Coleman, Senator Gallegos and the complainant have expressed an interest in this matter, as well as three other neighbors.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 15, 2007. One comment was received on September 19, 2007. A copy is included with these back-up documents. A copy of the ED's response letter dated October 1, 2007 is also included.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Sandy VanCleave, Water Enforcement Section, MC 169, (512) 239-0667 TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623 Respondent: Mr. Donald Burkhardt, Owner, Clearwood Recycling Center, 2404 Taylor Lane, Pearland, Texas 77581 Respondent's Attorney: Ms. Elizabeth Burkhardt, Attorney at Law, 9821 Shadow Wood Dr., Houston, TX 77080</p>		

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
 2007 OCT -3 AM 11:07
 CHIEF CLERKS OFFICE

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 1, 2007

Via First Class Mail, Via Certified Mail Article #70041350000275660545

Ms. Cherry Young
9311 Radio Rd.
Houston, Texas 77075

Re: Response to Letter Dated September 15, 2007
Settlement Agreement for Donald Burkhardt
TCEQ Docket No. 2005-0959-MLM-E

Dear Ms. Young:

Thank you for your letter dated September 15, 2007 summarizing your concerns about the Donald Burkhardt dba Clearwood Recycling Facility (the "Respondent") enforcement action. I appreciate your interest in the work being done by the Texas Commission on Environmental Quality ("TCEQ") and your commitment to helping to protect the environment. After carefully reviewing the issues you submitted in your letter, I offer a response.

First, you expressed concern about the fact that the Respondent received a Notice of Violation ("NOV") on October 21, 2003, followed by TCEQ's approval of Mr. Burkhardt's application for a recycling permit on March 11, 2004 without requiring Mr. Burkhardt to: (1) post a bond for clean-up and clean up previous debris before taking on more and (2) provide proof of the applicant's possession of recycling machinery. With regard to financial assurance, the rules relating to financial assurance for a recycling permit were not effective until November 4, 2004. Therefore, financial assurance was not required on the date which the TCEQ approved Mr. Burkhardt's application. With regard to the second issue, rules and regulations do not require applicants to provide proof of the applicant's possession of recycling machinery. You also indicated that it is your belief that TCEQ did not require the Respondent to provide proof "that he did indeed intend to recycle anything dumped on his 30+ acres." However, Mr. Burkhardt submitted a form to TCEQ entitled "Notice of Intent to Operate a Recycling Facility" which did demonstrate his intent to operate a recycling facility. By submitting the form, he was in compliance at that time with 30 TEX. ADMIN. CODE § 328.5(b), the rule in effect at the time¹ which set for the reporting requirements for recycling facilities.

¹30 TEX. ADMIN. CODE § 328.5 was amended to be effective November 4, 2004, 29 TexReg 10120. The amended 30 TEX. ADMIN. CODE § 328.5(c) and (d) require cost closure estimates and proof of financial assurance. These requirements were not in effect at the time Mr. Burkhardt's application was approved.

Next, you outlined six numbered paragraphs requesting changes to the technical requirements of the signed proposed Agreed Order which will be presented to the Commissioners on October 24, 2007. I will respond to each of the six numbered paragraphs in the order which you included them in your letter.

1. You requested that TCEQ require the Respondent to remove the barrels of used oil from the property entirely. According to 30 TEX. ADMIN. CODE § 324.6 and 40 CFR pts. 264 and 265 and § 279.22(a) and (c)(1), the Respondent must label or clearly mark containers containing used oil with the words "Used Oil." The rules applicable to used oil (30 TEX. ADMIN. CODE ch. 324) do not require the Respondent to remove the oil barrels entirely from his property, but do require him to comply with proper handling and labeling of used oil while it is on his property.

2. You have asked that the Executive Director include a specific list of items to be disposed of from the Respondent's property. 30 TEX. ADMIN. CODE § 330.3(88) defines municipal solid waste as "solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste." It is the Executive Director's position that it is ill advised to include a list of specific items because the Respondent could consider such a list as being "exhaustive." In other words, if an item is present on the property which is not included in such a list in an order, the Respondent might consider that the TCEQ will not require its removal.

3. Your third request asks that the Executive Director require the Respondent to provide "an 'Affected Property Assessment Report' ('APAR') and subsequent clean-up for all 30+ acres." TCEQ requires submission of an APAR only for those portions of property on which a release is documented or suspected. Prior investigations conducted by TCEQ employees have resulted in findings of oil residue only near the secondary containment area and workshop area. No contamination was found on any other portions of the property during the investigations. Therefore, the TCEQ only requires the Respondent to submit an APAR for the contaminated portions of the property. 30 TEX. ADMIN. CODE ch. 350 outlines the requirements for an affected property assessment. 30 TEX. ADMIN. CODE § 350.51(1)(4) provides in part that "the soil exposure area for commercial/industrial properties shall not exceed 1/2 acre, unless it is demonstrated that a larger area is appropriate based upon documented activity patterns."

4. The fourth item in your letter contains a request that the Executive Director require the Respondent to demolish all unsafe buildings and structures. You reference a letter from the City of Houston's Buildings and Standards Commission. As you may be aware, the City of Houston obtained a Dangerous Building and Property Nuisance Order for the Respondent's property on

October 27, 2004. That Order addresses the Respondent's violations of the City of Houston's Code of Ordinances with respect to a "one-story metal frame commercial building on slab." Regulation of this type of structure falls under the City of Houston's Building and Standards Commission jurisdiction. Therefore, the Executive Director will not include a technical requirement in its proposed Agreed Order that is within the City of Houston's jurisdiction. Furthermore, the rules and regulations of TCEQ do not give the Executive Director the authority to require a person to remove a building or structure from his or her property. In fact, the City of Houston's Order does not require the Respondent to demolish the building, but rather requires him to obtain City building repair permits and to repair the building's deficiencies.

5. Your fifth request is that the Executive Director require a diesel storage tank (referenced in a City of Houston Fire Department Memo dated February 3, 2004) and any other flammable storage vessels surrounding it be removed, as well as "contaminated ground around it stripped and reclaimed." The Houston Fire Marshall, rather than TCEQ, has jurisdiction over secondary containment areas surrounding flammable storage tanks. Therefore, it is not within TCEQ's jurisdiction to put a requirement in the proposed Agreed Order that the "flammable storage vessel" surrounding the tank be removed (the "dike," referenced in your letter). In addition, because the two above ground storage tanks have less than 1,100 gallons of storage capacity, 30 TEX. ADMIN. CODE § 334.124(a)(1) provides that these tanks are excluded from regulation by the TCEQ.

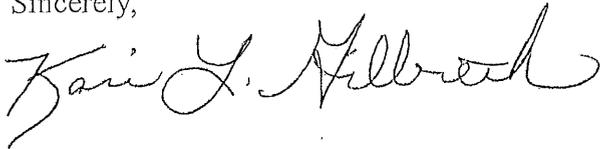
6. The sixth request (in part) is that, "In essence, we would like for the acreage to be completely stripped of all debris and hazards and have the remaining ground leveled so as not to promote any more flooding in our area." It is the Executive Director's position that the ordering provisions currently contained in the proposed Agreed Order address this concern. In particular, Ordering Provision No. 2.b.iv. on page five of the proposed Agreed Order requires the following: "Begin removing all waste from the Facility to a permitted landfill, authorized recycling facility, or an authorized mulching facility for the wood debris, in accordance with 30 TEX. ADMIN. CODE § 330.5. Mr. Burkhardt shall continue removing waste from the Facility not later than 30 days following the due date of the previous removal until all waste is removed from the Facility."

Finally, you have requested that the TCEQ "closely monitor Mr. Burkhardt's compliance with any Commission ordered settlement in the form of almost daily inspections." TCEQ takes compliance with environmental rules and regulations very seriously. The Enforcement Division has an Order Compliance Team which closely monitors all Orders which are approved by the Commission. Once the Order is approved by the Commission, a copy will be sent to this team, as well as to the TCEQ Houston Regional Office for monitoring. Due to the large number of regulated entities across the State of Texas, TCEQ does not have the resources to monitor compliance with technical requirements on a nearly daily basis, but we will verify compliance documentation as it is submitted to the Agency by the Respondent.

Ms. Cherry Young
Response to Letter Dated September 15, 2007
October 1, 2007
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Thank you for your interest in the work of the Texas Commission on Environmental Quality.
I hope that this letter has addressed your concerns.

Sincerely,

A handwritten signature in cursive script that reads "Kari L. Gilbreth". The signature is written in black ink and is positioned above the typed name.

Kari L. Gilbreth
Litigation Division

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: September 26, 2003</p> <p>Dates of Investigation Relating to this Case: October 2, 2003; January 19, 2005 and January 20, 2005</p> <p>Date of NOV Relating to this Case: October 21, 2003 (NOV); April 22, 2005 (NOE); July 27, 2005 (second NOE)</p> <p>Background Facts: An EDPRP was filed on December 12, 2005. The Respondent filed an answer. An evidentiary hearing was scheduled for May 25, 2007. The Respondent signed an Agreed Order on May 22, 2007. The ED's Motion to Remand was granted by the ALJ.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>(MLM)</p> <p>1. Failed to make available for Commission review written cost estimate to show the cost of hiring a third party to close the Facility by disposition of all processed and unprocessed materials in accordance with applicable regulations [30 TEX. ADMIN. CODE § 328.5(c)(1), (f) and (g)].</p> <p>2. Failed to make available for Commission review records that show Mr. Burkhardt established and maintained financial assurance for closure of the Facility [30 TEX. ADMIN. CODE § 328.5(d), (f) and (g)].</p> <p>3. Failed to make available for Commission review a copy of the Facility's fire prevention and suppression plan to the local fire prevention authority having jurisdiction over the Facility [30 TEX. ADMIN. CODE § 328.5(h)].</p>	<p>Total Assessed: \$6,774</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$299/6,475</p> <p>The Respondent has paid \$299 of the administrative penalty. The remaining amount of \$6,475 shall be payable in 35 monthly payments of \$185 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action Taken:</p> <p>The Executive Director recognizes that the Respondent provided a copy of the fire prevention and suppression plan to the local fire prevention authority on March 14, 2005 and to TCEQ on March 15, 2005.</p> <p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1) Immediately, cease to collect, handle, store, process or dispose of additional solid waste of any kind, including but not limited to, wood material of any character, grass and leaves.</p> <p>2) Within 30 days:</p> <p>a) Ensure that all used oil is stored in tanks, containers or units that are properly closed with the words "Used Oil" clearly labeled on the tanks, containers or units;</p> <p>b) Maintain all records that are applicable to the Facility;</p> <p>c) Provide a written cost estimate to show cost of hiring a third party to close the Facility by disposal of all processed and unprocessed materials in accordance with applicable requirements and provide information of adequate financial assurance;</p> <p>d) Begin removing all waste from the Facility to a permitted landfill, authorized recycling facility or an authorized mulching facility for the wood debris. Respondent shall continue removing waste from the Facility not later than 30 days following the due date of previous removal until all waste is removed from the Facility;</p> <p>3) Within 60 days, submit a progress report and receipts indicating the date of removal, the amount of waste removal and the name and permit number of the landfill receiving the waste or the amount of waste removed and the name and the authorization number of the facility receiving the waste to demonstrate compliance.</p>

4. Failed to prevent the dumping of municipal solid waste without the written authorization of the Commission [30 TEX. ADMIN. CODE § 330.5(c) recodified as 30 TEX. ADMIN. CODE § 330.15(c) effective March 27, 2006].

5. Failed to label or clearly mark containers containing used oil with the words "Used Oil." Specifically, it was documented that five drums and four buckets containing used oil were not properly secured with a cover marked with the words "Used Oil" [30 TEX. ADMIN. CODE § 324.6 and 40 CFR pts. 264 and 265 and § 279.22(a) and (c)(1)].

6. Failed to prevent the discharge or disposal of used oil in a manner that endangers the public health or welfare of the environment. Specifically, during the investigation, stained soils and several discharges of used oil and diesel fuel from fueling and maintenance activities adjacent to the secondary containment area and the workshop area were found [30 TEX. ADMIN. CODE § 324.4(1)].

The reports and receipts shall be provided no later than 60 days following the disposal date of the previous report until all waste is removed from the Facility.

4) Within 90 days, submit an Affected Property Assessment Report for the contaminated soil adjacent to the secondary containment area and workshop area.

5) Within 105 days, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.

9) Within 365 days, submit written certification that all waste has been removed from the Facility and submit written request for revocation of the Notice of Intent to Recycle, No.: 100033.

September 15, 2007

Ms. Kari Gilbreth
TCEQ Litigation Division
P. O. Box 13087, MC 175
Austin, Texas 78711-3087

RE: Settlement Agreement for Donald Burkhardt
Docket # 2005-0959-MLM-E

Dear Ms. Gilbreth:

We have spoken by phone a couple of times in reference to Mr. Donald Burkhardt and his "Clearwood Recycling" debacle, so it will come as no surprise to you that I am submitting a comment on the proposed settlement agreement to be put before the TCEQ Commissioners soon.

First, I must tell you how very, very disappointed I and most of my neighbors are over the handling by TCEQ of this problem. It has taken way too long since the first complaint reached the offices of TCEQ in September, 2003 for the agency to perform its duty to protect area residents from the ill effects heaped on us from one very unscrupulous, dishonorable and arrogant land owner (Donald Burkhardt). Indeed, we find it unfathomable that on the heels of your Notice of Violation on October 21, 2003 that the agency would then approve his application to recycle on March 11, 2004 without him having met the requirements of that approval beforehand (i.e.- posting a bond for clean-up and cleaning up previous debris before taking on more) and without him having any real proof (in the way of recycling machinery) that he did indeed intend to recycle anything dumped on his 30+ acres. It seems to all of us in this area that the TCEQ should change their operating rules for approving such applications.

Notwithstanding our disappointment, sadness and lack of faith in the TCEQ for having to live with this problem too long, we are eagerly awaiting the commissions vote on rectifying this situation once and for all. In anticipation of that vote, I have read through the proposed settlement agreement provided to me by Representative Coleman's office and offer these suggestions to be included in the final agreement:

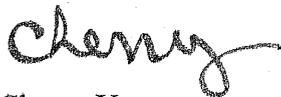
1. Instead of just putting the used oil in labeled barrels to remain on the property in perpetuity, we request that they be removed entirely. We fear that Mr. Burkhardt does not have a great track record for maintaining equipment and facilities and these barrels/containers will disintegrate and eventually pollute the ground even more.
2. We want you to include in section b. iv. the removal of not only "waste", which we take to mean lumber, shingles, metal strips, plastics, etc. but also the large, reinforced concrete forms that are lying about the property and are left over from his defunct business "Precast Structures." These pieces have been on the property for 15-20 years and cause as much a hazard as anything else he has placed there, and if left will continue to mark the acreage as a land-fill/dump. We also want you to include the removal of inoperable vehicles and other machinery/equipment we know he has placed there (see pictures taken by your inspector Mr. Jason Ybarra in his

- October, 2003 investigative report # 252289). In other words, we would like the order to be more specific as to the items to be removed, because we do not want Mr. Burkhardt to have an opportunity to have a lexicon debate over the word "waste."
3. We would like item "d" in the proposed agreement amended to include more than just the contaminated soil adjacent to the secondary containment area and workshop area and indeed have Mr. Burkhardt responsible for providing an "Affected Property Assessment Report" and subsequent clean-up for all 30+ acres. Please note that Mr. Burkhardt has used this property for over 25 years and accumulated untold hazards long before he began the ruse of operating a recycling center.
 4. And, to take it one step further, we would like for him to demolish all unsafe buildings and structures (see City of Houston Buildings and Standards Commission Notice of "Dangerous Buildings" to Mr. Burkhardt- Project # 03045395, dated 2004) on the property as they have already been condemned by the City of Houston and are potentially very dangerous.
 5. We note in a City of Houston Fire Department Memo dated February 3, 2004 concerning the Clearwood Recycling Center that they requested a "dike be placed around a diesel storage tank." We would like for this tank to be removed and the contaminated ground around it stripped and reclaimed. Any other flammable storage vessels should also be removed.
 6. In essence, we would like for the acreage to be completely stripped of all debris and hazards and have the remaining ground leveled so as not to promote any more flooding in our area. We have noticed that Mr. Burkhardt has begun to clean up some lumber debris and in moving it around, he has mounded up the ground which because of its elevation in relation to the rest of the neighborhood will cause flooding. This is a 30+ tract of land that sits in the MIDDLE of a residential area!

On a final note, we would ask the TCEQ to closely monitor Mr. Burkhardt's compliance with any Commission ordered settlement in the form of almost daily inspections. Mr. Burkhardt has proven himself to be unscrupulous and irresponsible and none of my neighbors put it past him to bury questionable products/materials and hire his own "cronies" to declare the land free of hazards.

We look forward to the final order from the Commissioners and reverently hope that they will give consideration to these suggestions for inclusion in such.

Regards,



Cherry Young
9311 Radio Rd.
Houston, Texas 77075
713-946-1648

c: Ryan Goodland
Staff Assistant to Representative Coleman
5445 Almeda Road, Suite 501
Houston, Texas 77004



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES	Assigned	25-Apr-2005	Screening	24-May-2005	EPA Due	
	PCW	29-Sep-2005				

RESPONDENT/FACILITY INFORMATION	
Respondent	Donald Burkhardt dba Clearwood Recycling Center
Reg. Ent. Ref. No.	RN102952785
Facility/Site Region	12-Houston
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	25608	No. of Violations	2
Docket No.	2005-0959-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Sandy VanCleave
Multi-Media		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$3,100**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5% Enhancement Subtotals 2, 3, & 7 **\$155**

Notes: The Respondent received one NOV with the same or similar violations.

Culpability No 0% Enhancement Subtotal 4 **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 **\$0**

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

Notes: The Respondent is not yet in compliance.

Economic Benefit 50% Enhancement* Subtotal 6 **\$1,550**

Total EB Amounts	\$76,522	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$466,421	

SUM OF SUBTOTALS 1-7 Final Subtotal **\$4,805**

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount **\$4,805**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$4,805**

DEFERRAL 0% Reduction Adjustment **\$0**

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

Notes: No deferral is recommended because this is not an expedited case.

PAYABLE PENALTY **\$4,805**

Screening Date 24-May-2005 **Docket No.** 2005-0959-MLM-E **PCW**
Respondent Donald Burkhardt dba Clearwood Recycling Center *Policy Revision 2 (September 2002)*
Case ID No. 25608 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102952785
Media [Statute] Municipal Solid Waste
Enf. Coordinator Sandy VanCleave

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written 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 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</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	<i>Please Enter Yes or No</i>		
	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

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

Screening Date 24-May-2005 **Docket No.** 2005-0959-MLM-E **PCW**
Respondent Donald Burkhardt dba Clearwood Recycling Center *Policy Revision 2 (September 2002)*
Case ID No. 25608 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102952785
Media [Statute] Municipal Solid Waste
Enf. Coordinator Sandy VanCleave
Violation Number
Primary Rule Cite(s) 30 Tex. Admin Code § 328.5(c)(1), (d), (f), (g) and (h)
Secondary Rule Cite(s)
Violation Description Failed to keep on file and make available for Commission review the following records: A written cost estimate to show the cost of hiring a third party to close the Facility by disposition of all processed and unprocessed materials in accordance with all applicable requirements, records to show adequate financial assurance for closure of the Facility, records subject to the requirements of 30 Tex. Admin. Code § 328.5(f), and a copy of the Facility's fire prevention and suppression plan.

Base Penalty

>> **Environmental, Property and Human Health Matrix**

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

>> **Programmatic Matrix**

		Major	Moderate	Minor	
	Falsification	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	Percent <input type="text" value="1%"/>

Matrix Notes

The Respondent failed to provide at least 30 percent of the required records for the Facility.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

One single event is recommended based on documentation of the violation during the investigation conducted on January 19 and 20, 2005.

Economic Benefit (EB) for this violation

Estimated EB Amount

Statutory Limit Test

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Donald Burkhardt dba Clearwood Recycling Center
 Case ID No. 25608
 Reg. Ent. Reference No. RN102952785
 Media [Statute] 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
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$200	19-Jan-2005	31-Jan-2007	2.0	\$20	n/a	\$20
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to provide the required records. Date required is the investigation date and final date is the estimated date of compliance.

Avoided Costs		ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)					
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance **\$200** TOTAL **\$20**

Screening Date 24-May-2005 **Docket No.** 2005-0959-MLM-E **PCW**
Respondent Donald Burkhardt dba Clearwood Recycling Center *Policy Revision 2 (September 2002)*
Case ID No. 25608 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102952785
Media [Statute] Municipal Solid Waste
Enf. Coordinator Sandy VanCleave
Violation Number
Primary Rule Cite(s)
Secondary Rule Cite(s)
Violation Description

Base Penalty

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	Percent <input type="text" value="10%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

		Major	Moderate	Minor	
	Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$3,000"/>
	monthly	<input type="text"/>	
	quarterly	<input checked="" type="checkbox"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$76,479"/>	Violation Final Penalty Total <input type="text" value="\$4,650"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$4,650"/>	

Economic Benefit Worksheet

Respondent Donald Burkhardt dba Clearwood Recycling Center
 Case ID No. 25608
 Reg. Ent. Reference No. RN102952785
 Media [Statute] 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
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$466,021	21-Oct-2003	31-Jan-2007	3.3	\$76,479	n/a	\$76,479
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to remove approximately 143,391 cubic yards of non-recyclable waste. Calculated @ \$3.25 per cubic yard disposal cost (\$3.25 x 143391 = \$466,021) Date required is the investigation date which the violation was initially documented 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				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$466,021** **TOTAL \$76,479**



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

TCEQ

DATES	Assigned	25-Apr-2005		
	PCW	29-Sep-2005	Screening	24-May-2005
			EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	Donald Burkhardt dba Clearwood Recycling Center		
Reg. Ent. Ref. No.	RN102952785		
Facility/Site Region	12-Houston	Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	25608	No. of Violations	2
Docket No.	2005-0959-MLM-E	Order Type	1660
Media Program(s)	Used Oil	Enf. Coordinator	Sandy VanCleave
Multi-Media		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

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 **Subtotals 2, 3, & 7**

Notes

Culpability **Subtotal 4**

Notes

Good Faith Effort to Comply **Subtotal 5**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with a small x)

Notes

Economic Benefit **Subtotal 6**

Total EB Amounts	<input type="text" value="\$1,755"/>	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	<input type="text" value="\$10,200"/>	

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 24-May-2005 **Docket No.** 2005-0959-MLM-E **PCW**
Respondent Donald Burkhardt dba Clearwood Recycling Center *Policy Revision 2 (September 2002)*
Case ID No. 25608 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102952785
Media [Statute] Used Oil
Enf. Coordinator Sandy VanCleave

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written 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 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 (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were</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) **5%**

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

No

Adjustment Percentage (Subtotal 3) **0%**

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

Average Performer

Adjustment Percentage (Subtotal 7) **0%**

>> **Compliance History Summary**

Compliance History Notes The Respondent received one NOV with the same or similar violations.

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

Screening Date 24-May-2005

Docket No. 2005-0959-MLM-E

PCW

Respondent Donald Burkhardt dba Clearwood Recycling Center

Policy Revision 2 (September 2002)

Case ID No. 25608

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102952785

Media [Statute] Used Oil

Enf. Coordinator Sandy VanCleave

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

		Harm				
Release		Major	Moderate	Minor		
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent	<input type="text" value="5%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>		

>> Programmatic Matrix

		Major	Moderate	Minor		
	Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent	<input type="text"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

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 Donald Burkhardt dba Clearwood Recycling Center
Case ID No. 25608
Reg. Ent. Reference No. RN102952785
Media [Statute] Used Oil
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Percent Interest	Years of Depreciation
						Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$200	21-Oct-2003	31-Jan-2007	3.3	\$33	n/a	\$33

Notes for DELAYED costs
 Estimated cost to properly store used oil in accordance with 40 CFR §§ 264 and 265 and clearly mark the used oil containers with the words "Used Oil." Date required is the investigation date which the violation was initially documented 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				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

TOTAL

Screening Date 24-May-2005

Docket No. 2005-0959-MLM-E

PCW

Respondent Donald Burkhardt dba Clearwood Recycling Center

Policy Revision 2 (September 2002)

Case ID No. 25608

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102952785

Media [Statute] Used Oil

Enf. Coordinator Sandy VanCleave

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text" value="10%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>				

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

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 Donald Burkhardt dba Clearwood Recycling Center
Case ID No. 25608
Reg. Ent. Reference No. RN102952785
Media [Statute] Used Oil
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Percent Interest / Years of Depreciation	
						Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$10,000	21-Oct-2003	31-Mar-2007	3.4	\$1,722	n/a	\$1,722
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to clean up/remediate contaminated soil at the site. Date required is the investigation date which the violation was initially documented 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				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$10,000**

TOTAL \$1,722

Compliance History

Customer/Respondent/Owner-Operator:	CN602451957	BURKHARDT, DONALD	Classification: AVERAGE	Rating: 9.000
Regulated Entity:	RN102952785	CLEARWOOD RECYCLING CENTER	Classification: AVERAGE	Site Rating: 9.00
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER		455120101
	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER		100033
	MUNICIPAL SOLID WASTE PROCESSING	REGISTRATION		100033
Location:	9520 EASTHAVEN BLVD, HOUSTON, TX, 77075		Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	May 18, 2005			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 18, 2000 to May 18, 2005			

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

Name: Sandy VanCleave Phone: (512) 239-0667

Site Compliance History Components

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

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 04/22/2005 (350475)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 10/21/2003 (251189)
- Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter A 328.5(b)[G]
Description: Clearwood Recycling Center failed to notify prior to the commencement of new operations.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.5(c)
Description: Clearwood caused, suffered, allowed, and/or permitted the dumping of municipal solid waste without the written authorization of the commission.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 324; SubChapter A 324.4(1)
Description: Clearwood must not collect, transport, store, burn, market, recycle, process, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or the environment.
- F. Environmental audits.
N/A
Description:
- 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 DONALD
BURKHARDT DBA CLEARWOOD
RECYCLING CENTER;
RN102952785

§
§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2005-0959-MLM-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Donald Burkhardt dba Clearwood Recycling Center ("Mr. Burkhardt") under the authority of TEX. WATER CODE ch. 7, 30 TEX. HEALTH & SAFETY CODE chs. 361 and 371, and 40 CODE OF FEDERAL REGULATIONS ("CFR") ch. 279. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Burkhardt, represented by Elizabeth Burkhardt, Attorney at Law, appear before the Commission and together stipulate that:

1. Mr. Burkhardt owns and operates a recycling facility located at 9520 Easthaven Blvd., in Houston, Harris County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE chs. 361 and 371, and TCEQ rules.
3. The Commission and Mr. Burkhardt agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Burkhardt is subject to the Commission's jurisdiction.
4. Mr. Burkhardt received notice of the violations alleged in Section II ("Allegations") on or about April 27, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Burkhardt of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of six thousand seven hundred seventy-four dollars (\$6,774.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Burkhardt has paid two hundred ninety-nine dollars (\$299.00) of the administrative penalty. The remaining amount of six thousand four hundred seventy-five dollars (\$6,475.00) of the administrative penalty shall be payable in thirty-five monthly payments of one hundred eighty-five dollars (\$185.00) each. The first 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.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Burkhardt have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Burkhardt has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Mr. Burkhardt, as owner and operator of the Facility, is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 328.5(c)(1), (f) and (g), by failing to make available for Commission review a written cost estimate to show the cost of hiring a third party to close the Facility by disposition of all processed and unprocessed materials in accordance with applicable regulations, as reported during inspections conducted on January 19 and 20, 2005.
2. 30 TEX. ADMIN. CODE § 328.5(d), (f) and (g), by failing to make available for Commission review records that show Mr. Burkhardt established and maintained financial assurance for closure of the Facility in accordance with 30 TEX. ADMIN. CODE 37 Subchapter J (relating to

Financial Assurance for Recycling Facilities), as reported during inspections conducted on January 19 and 20, 2005.

3. 30 TEX. ADMIN. CODE § 328.5(h), by failing to make available for Commission review a copy of the Facility's fire prevention and suppression plan to the local fire prevention authority having jurisdiction over the Facility, as reported during inspections conducted on January 19 and 20, 2005.
4. 30 TEX. ADMIN. CODE § 330.5(c)¹, by failing to prevent the dumping of municipal solid waste without the written authorization of the Commission, as reported during inspections conducted on January 19 and 20, 2005.
5. 30 TEX. ADMIN. CODE § 324.6 and 40 CFR pts. 264 and 265 and § 279.22(a) and (c)(1), by failing to label or clearly mark containers containing used oil with the words "Used Oil." Specifically, it was documented that five drums and four buckets containing used oil were not properly secured with a cover or marked with the words "Used Oil," as reported during inspections conducted on January 19 and 20, 2005.
6. 30 TEX. ADMIN. CODE § 324.4(1), by failing to prevent the discharge or disposal of used oil in a manner that endangers the public health or welfare of the environment. Specifically, during the investigation, stained soils and several discharges of used oil and diesel fuel from fueling and maintenance activities adjacent to the secondary containment area and the workshop area, as reported during inspections conducted on January 19 and 20, 2005.

III. DENIALS

Mr. Burkhardt generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Burkhardt pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Burkhardt's compliance with all the terms and conditions set forth in this Agreed Order

¹ 30 TEX. ADMIN. CODE § 330.5(c) was recodified as 30 TEX. ADMIN. CODE § 330.15(c) effective March 27, 2006 by 31TexReg 2502.

resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action 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: Donald Burkhardt dba Clearwood Recycling Center, Docket No. 2005-0959-MSW" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Burkhardt shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease to collect, handle, store, process or dispose of additional solid waste of any kind, including but not limited to, wood material of any character, grass and leaves, until Mr. Burkhardt has met the condition under Ordering Provision 2.f., in accordance with 30 TEX. ADMIN. CODE § 330.4.
 - b. Within 30 days after the effective date of this Agreed Order Mr. Burkhardt shall:
 - i. Ensure that all used oil is stored in tanks, containers or units that are properly closed with the words "Used Oil" clearly labeled on the tanks, containers or units, as required by 30 TEX. ADMIN. CODE § 324.6 and 40 CFR § 279.22(a) and (c)(1);
 - ii. Maintain all records that are applicable to the Facility in accordance with 30 TEX. ADMIN. CODE § 328.5;
 - iii. Provide a written cost estimate to show the cost of hiring a third party to close the Facility by disposal of all processed and unprocessed materials in accordance with applicable requirements and provide documentation of adequate financial assurance, as required by 30 TEX. ADMIN. CODE § 328.5(c)(1) and (d); and

- iv. Begin removing all waste from the Facility to a permitted landfill, authorized recycling facility or an authorized mulching facility for the wood debris, in accordance with 30 TEX. ADMIN. CODE § 330.15². Mr. Burkhardt shall continue removing waste from the Facility not later than 30 days following the due date of the previous removal until all waste is removed from the Facility.
- c. Within 60 days after the effective date of this Agreed Order, Mr. Burkhardt shall submit a progress report and receipts indicating the date of removal, the amount of waste removed and the name and permit number of the landfill receiving the waste or the amount of waste removed and the name and the authorization number of the facility receiving the waste to demonstrate compliance with Ordering Provision No. 2.b.iv. The progress reports and receipts shall be submitted as described in Ordering Provision 2.g. and shall be provided no later than 60 days following the disposal date of the previous report until all waste is removed from the Facility.
- d. Within 90 days after the effective date of this Agreed Order, Mr. Burkhardt shall submit an Affected Property Assessment Report for the contaminated soil adjacent to the secondary containment area and workshop area, pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. If response actions are necessary, Mr. Burkhardt shall comply with all applicable requirements of the Texas Risk Reduction Program (TRRP) found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(1)); and Institutional Controls under Subchapter F.
- e. Within 105 days after the effective date of this Agreed Order, Mr. Burkhardt shall submit written certification as described in Ordering Provision No. 2.g, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 2.a. through 2.d.
- f. Within 365 days after the effective date of this Agreed Order, Mr. Burkhardt shall submit written certification as described below that all waste has been removed from the Facility and submit a written request for revocation of the Notice of Intent to Recycle, No.: 100033.
- g. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

² 30 TEX. ADMIN. CODE § 330.5 was recodified as 30 TEX. ADMIN. CODE § 330.15 effective March 27, 2006 by 31TexReg 2502.

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.

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:

Nicole Bealle, Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue., Ste. H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Burkhardt. Mr. Burkhardt 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 Mr. Burkhardt 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, Mr. Burkhardt's failure to comply is not a violation of this Agreed Order. Mr. Burkhardt shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Burkhardt shall notify the Executive Director within seven days after Mr. Burkhardt 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 Mr. Burkhardt shall be made in writing to the Executive Director. Extensions are not effective until Mr. Burkhardt

receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

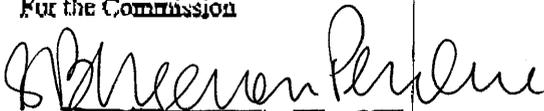
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Burkhardt in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 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 the Order to Mr. Burkhardt, or three days after the date on which the Commission mails notice of the Order to Mr. Burkhardt, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Donald Burkhardt dba Clearwood Recycling Center
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

8/30/07

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 the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

5-22-07
Date

Donald Burkhardt

OWNER
Title

Name (Printed or typed)
Authorized representative of
Donald Burkhardt
dba Clearwood Recycling Center