

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2004-0014-MLM-E TCEQ ID NOS.: BG-0149-O, 30060, BG-0147-S, 38362, BG-0293-G
AND BG-1092-L, RN102923976 AND RN102601804**

**RESPONDENT NAME: NEWELL RECYCLING OF SAN ANTONIO, L.P., NEWELL RECYCLING CO.,
INC., NEWELL LTD., NEWELL ENTERPRISES, INC., NEWELL PRODUCTS, INC. AND NEWELL
INTERNATIONAL, INC.**

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 checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 726 Probandt Street and 501 Steves Avenue, San Antonio, Bexar County</p> <p>TYPE OF OPERATION: Scrap metal shredding and recycling, shredder residue reclamation, metal sorting and lead battery recovery</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 3, 2006. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Merrilee Hupp, Water Enforcement Section, MC 169, (512) 239-4490 TCEQ Regional Contact: Mr. Richard Garcia, San Antonio Regional Office, MC R-13, (210) 490-3096 Respondent: Mr. Carlton J. Nichols, Vice-President, 726 Probandt Street, San Antonio, Texas 78204 Respondent's Attorney: Mr. David J. Tuckfield, The Law Office of David J. Tuckfield, P.C., 12400 Highway 71 West, Suite 350-150, Austin, Texas 78738</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Dates of Complaints Relating to this Case: None</p> <p>Dates of Investigations: April 3, 1997, May 13, 1997, January 27, 1998, January 29, 1998, June 9, 1999, June 11, 1999, October 1, 1999 and February 24, 2001</p> <p>Dates of NOEs Relating to this Case: March 18, 1998, March 19, 1998, July 2, 1998 and October 25, 1999</p> <p>Background Facts:</p> <p>This is a multi-media case involving hazardous waste and air violations. The case was originally named Newell Recycling of San Antonio, but was later amended to include all of the Newell Entities. Along the way, there were many delays including litigation, corrective action, bankruptcy of one of the entities, addressing technical requirements, change in legal representation, and offering a SEP. The parties exchanged several settlement offers and eventually the current amount of \$85,000, was reached.</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. During air sampling conducted on February 24, 1998, TNRCC staff documented that emissions from Newell Recycling of San Antonio and Newell LTD contained lead. TNRCC air sampling conducted on November 16, 1998 documented that emissions from Newell Industries contained lead. TNRCC solid waste sampling conducted on January 27, 1998 and February 2, 1999 document that baghouse dust from Newell Industries' foundry contained significantly elevated levels of lead. TNRCC inspections conducted on May 13, 1997, January</p>	<p>Initial Calculated Penalty: \$118,750*</p> <p>Total Assessed: \$85,000</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$85,000</p> <p>The Respondents have paid the administrative penalty in full.</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Multiple facilities – some had minor source violations and other had major source violations.</p> <p>Applicable Penalty Policy: 1999</p> <p>*Explanation for Reduction in Penalty: The penalty was reduced in consideration of the risks of litigation.</p>	<p>Ordering Provisions</p> <p>Within 120 days, the Respondent shall complete a site assessment with verification sampling for the contamination to the Executive Director for approval. The areas to be investigated for the site assessment shall include, but are not limited to, areas formerly documented to have contamination and potential for contamination, including the soil, sediment, groundwater and surface water. The APAR shall document the procedures, conclusions and all information relating to affected property assessment and development of protective concentration levels. The APAR shall contain all information including a comparison of the Constituents of Concern concentrations with the Critical Protective Concentration Levels (CPCL) to determine if response actions are required. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program which may include: plans, reports, notices, financial assurance and Institutional Controls. Upon approval of the Executive Director, Newell Ltd. may demonstrate compliance with this remedial ordering provision by submitting documentation that the required work has been completed as part of the remedial activities currently being conducted at the Newell Ltd. Plant.</p>

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>27, 1998, and January 29, 1999 documented that Newell Industries' baghouse dust was not being properly controlled and that baghouse dust was being emitted into the atmosphere. During TNRCC soil sampling events conducted on November 20, 1997, January 20-21, 1998, February 23-24, March 3-5, 1998, and April 15, 1999, the TNRCC documented lead contamination of the soil in and around the 500-800 blocks of Probandt Street and along Lone Star Boulevard near its intersection with Probandt Street [30 TEX. ADMIN. CODE §§ 101.4 and 335.4, TEX. WATER CODE § 26.121, and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b)].</p> <p>2. Released visible emissions from the shredder in excess of 5% opacity for any 6 minute period. Specifically, the opacity of the visible emissions was 25% for the total 18-minute period, including 38% for the first 6 minute period [TCEQ Order Docket No. 1998-0235-MLM-E].</p> <p>3. Discharged industrial solid waste into or adjacent to the waters in the state. Specifically, unauthorized discharges of iron, chromium, aluminum, arsenic, barium, cadmium, calcium, cobalt, copper, lead, magnesium, manganese, mercury, molybdenum, nickel, sodium, vanadium, and zinc [30 TEX. ADMIN. CODE § 335.4 and TEX. WATER CODE § 26.121].</p>		

TNRCC

Penalty Calculation Worksheet

Plcy. rev. 1; SB 1876

PCW rev. 07/09/1999



Case Information

Screening Date	31-Aug-1999	format: 4/23/97	Case Priority Due Date	29-Nov-1999
PCW Date	23-Nov-1999	format: 4/23/97	EPA SNC/SV Due Date	
Respondent	Newell, LTD.			
ID Number(s)	RN102923976			
Docket Number	2004-0014-MLM-E		Facility/Site Region	13
Enf. Coordinator	Merrilee Gerberding		EC's Unit or Region	Team 1
Type of Order	1660		No. of Violations in PCW	1
Case Priority	2		Enter x for Major Source (as defined in PP)	

Media-Program

x	Program Name(s)	Min	Max
x	IHW	\$0	\$10,000
	Water Rights	\$0	\$5,000
	Air and ISW	\$0	\$2,500
	Public Water Supply	\$50	\$1,000
	Levees	\$0	\$1,000
	Public Water Utilities	\$0	\$500

Adjustments to Subtotal 1

Total Base Penalty forward (subtotal 1) **\$72,500**

Culpability (enhancement)

Does the respondent meet any of the culpability criteria? Yes No

Notes: No previous NOVs for same or similar violations.

Adjustment amount (subtotal 2) **\$0**

Economic Benefit (enhancement)

Total of EB Amounts **\$7,909**

EB Enhancement (percent) **0%**

Adjustment amount (subtotal 5) **\$0**

Approx. Cost of Compliance **\$60,000**

Good Faith Effort to Comply (reduction)

Timing of Action

Quality of Action	Before NOV	NOV to EDP RP or Order	Percent
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>	
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>	0%
None of the above	<input checked="" type="checkbox"/>	(mark only one; use small x)	

Notes: Respondent does not meet the good faith criteria.

Adjustment amount (subtotal 3) **\$0**

Compliance History (enhancement)

Enter Percent **0** (enter number only; e.g., 30 for 30%)

Notes: There is no record of previous findings orders, judicial actions, or criminal convictions.

Adjustment amount (subtotal 4) **\$0**

Final Subtotal \$72,500

Other Factors as justice may require

Enter Adjustment Percentage (+/-) (enter number only; e.g., -30 for -30%)

Amount **\$0**

Notes:

(if more space is needed, increase row height)

Final Penalty Amount \$72,500

Final Assessed Penalty (including any statutory limit adj.) \$72,500

Payable Penalty

Enter Deferral Percentage **0%** (enter number only; e.g., 20 for 20%)

Deferral **\$0**

Notes: No deferral because this is a non-expedited case.

Payable Penalty \$72,500

Screening Date	31-Aug-99	Docket Number	2004-0014-MLM-E	PCW
Respondent	Newell, LTD.			Plcy. rev. 1; SB 1876
ID Number(s)	RN102923976			PCW rev. 07/09/1999
Media [Statute]	IHW			
Enf. Coordinator	Merrilee Gerberding			
Violation Number	1			
Primary Rule Cite	30 Tex. Admin. Code § 335.4			
Secondary Cite(s)	Texas Water Code § 26.121			
Violation Description	During sampling events and investigations conducted on 4/3/97, 1/27/98, 1/29/98, 6/9/99 and 6/11/99, numerous areas of unauthorized discharges (including offsite locations) of iron, chromium, aluminum, arsenic, barium, cadmium, calcium, cobalt, copper, lead, magnesium, manganese, mercury, molybdenum, nickel, sodium, vanadium, and zinc were documented.			

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix				
	Harm			
	Release	Major	Moderate	Minor
OR	Actual		x	
	Potential			
				Percent 25%
» Programmatic Matrix				
	Falsification	Major	Moderate	Minor
				Percent
Matrix Notes	Unauthorized discharges of industrial solid waste on the ground within and adjacent to the property has exposed human health or the environment to significant amounts of pollutants with no documented significant impact on human health or environmental receptors due to impact on respondent's already-contaminated industrial property).			
				Adjustment -\$7,500
				Base Penalty Subtotal \$2,500

Violation Events				
	Number of Violation Events	29		
<i>mark only one; use small x</i>	daily			
	monthly	x		
	quarterly			
	semiannual			
	annual			
	single event			
				Violation Base Penalty \$72,500

Events Notes	Recommend 29 monthly events beginning with the 4/3/97 sampling investigation to the screening date of August 31, 1999.
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Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount (\$) \$7,308	Violation Final Penalty total \$72,500
This Violation Final Assessed Penalty (adjusted for limits) \$72,500	

ID Number(s)	RN102923976		Percent Interest	5.0	Years of Depreciation	15	
Media [Statute]	IHW						
Violation Number	1						
Item Description	Item Cost No commas	Date Required 00/00/00	Final Date 00/00/00	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	\$50,000	3-Apr-1997	5-Mar-2000	2.9	\$7,308	n/a	\$7,308
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 discharges, from date of first inspection to estimated compliance date.

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/equip				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

INSTRUCTIONS

Make entries only in yellow, double-lined cells.

TNRCC

Penalty Calculation Worksheet

Plcy. rev. 1; SB 1876

PCW rev. 07/09/1999

Go to VL 1

Case Information

Screening Date	29-Dec-1997	format: 4/23/97	Case Priority Due Date	29-Mar-1998
PCW Date	23-Jun-2005	format: 4/23/97	EPA SNC/SV Due Date	
Respondent	Newell Recycling of San Antonio, L.P.			
ID Number(s)	RN102601804			
Docket Number	2004-0014-MLM-E		Facility/Site Region	13
Enf. Coordinator	Merrilee Gerberding		EC's Unit or Region	Team 1
Type of Order	1660		No. of Violations in PCW	1
Case Priority	2		Enter x for Major Source (as defined in PP)	

Media-Program

x	Program Name(s)	Min	Max	Admin. Penalty Dollar Limit
x	Air	\$0	\$10,000	
	Water Rights	\$0	\$5,000	
		\$0	\$2,500	
	Public Water Supply	\$50	\$1,000	
	Levees	\$0	\$1,000	
	Public Water Utilities	\$0	\$500	

Adjustments to Subtotal 1 Total Base Penalty forward (subtotal 1) \$5,000

Culpability (enhancement)

Does the respondent meet any of the culpability criteria? Yes No

Notes: An order (docket 1998-0235-MLM-E) became effective 6/8/1999, and included a similar violation.

Adjustment amount (subtotal 2) \$1,250

Economic Benefit (enhancement)

Total of EB Amounts \$6,051

EB Enhancement (percent) 0%

Adjustment amount (subtotal 5) \$0

Approx. Cost of Compliance \$60,000

Good Faith Effort to Comply (reduction)

Timing of Action

Quality of Action	Before NOV	NOV to EDPRP or Order	Percent
Extraordinary			
Ordinary			0%
None of the above	x	(mark only one; use small x)	

Notes: The respondent does not meet the good faith criteria.

Adjustment amount (subtotal 3) \$0

Compliance History (enhancement)

Enter Percent 0 (enter number only; e.g., 30 for 30%)

Notes: There is no record of previous findings orders, judicial actions, or criminal convictions.

Adjustment amount (subtotal 4) \$0

Final Subtotal \$6,250

Other Factors as justice may require

Enter Adjustment Percentage (+/-) 0% (enter number only; e.g., -30 for -30%)

Amount \$0

Notes: (if more space is needed, increase row height)

Final Penalty Amount \$6,250

Payable Penalty

Final Assessed Penalty (including any statutory limit adj.) \$6,250

Enter Deferral Percentage 0% (enter number only; e.g., 20 for 20%)

Deferral \$0

Notes: No deferral because this is a non-expedited case.

Payable Penalty \$6,250

Screening Date	29-Dec-97	Docket Number	2004-0014-MLM-E	PCW
Respondent	Newell Recycling of San Antonio, L.P.			Plcy. rev. 1; SB 1876
ID Number(s)	RN102601804			PCW rev. 07/09/1999
Media [Statute]	Air			
Enf. Coordinator	Merrilee Gerberding			
Violation Number	1			
Primary Rule Cite	TNRCC Order 1998-0235-MLM-E provision IV.B.1			
Secondary Cite(s)				
Violation Description	<p>On October 1, 1999, a TNRCC San Antonio Regional Office investigator observed visible emissions (VE) from the shredder. The opacity of the VE was 26% for the total 18-minute period, including 38% for the first six-minute period.</p>			

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix					
Harm					
OR	Release	Major	Moderate	Minor	
	Actual	x			
	Potential				
Percent <input type="text" value="50%"/>					
» Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
Percent <input type="text"/>					
Matrix Notes	Emissions of particulate matter have exposed human health or the environment to significant amounts of pollutants which (due to lead content) exceed levels that are protective of human health or environmental receptors.				
Adjustment -\$5,000					
Base Penalty Subtotal \$5,000					

Violation Events				
Number of Violation Events		<input type="text" value="1"/>		
<i>mark only one; use small x</i>	daily	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	x		
Violation Base Penalty \$5,000				
Events Notes	The violation was a discrete event. One single event based on the date of inspection.			

Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount (\$)	<input type="text" value="\$5,450"/>	Violation Final Penalty total	<input type="text" value="\$6,250"/>
This Violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$6,250"/>	

ID Number(s) RN102601804
 Media [Statute] Air
 Violation Number 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas</small>	Date Required <small>00/00/00</small>	Final Date <small>00/00/00</small>	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment	\$50,000	1-Oct-1999	6-Sep-2000	0.9	\$2,336	\$3,114	\$5,450
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to enhance emission control system to prevent visible emissions.

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/equip				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 \$50,000

TOTAL \$5,450

INSTRUCTIONS

Make entries only in yellow, double-lined cells.

TNRCC

Penalty Calculation Worksheet

Plcy. rev. 1; SB 1876 PCW rev. 07/09/1999



Case Information

Screening Date	29-Dec-1997 <small>format: 4/23/97</small>	Case Priority Due Date	29-Mar-1998
PCW Date	23-Jun-2005 <small>format: 4/23/97</small>	EPA SNC/SV Due Date	
Respondent	Newell Recycling of San Antonio, L.P., Newell Recycling Co., Inc., Newell LTD., Newell Enterprises, Inc., Newell Products, Inc., and Newell International, Inc.		
ID Number(s)	RN102601804		
Docket Number	2004-0014-MLM-E	Facility/Site Region	13
Enf. Coordinator	Merrilee Gerberding	EC's Unit or Region	Team 1
Type of Order	1660	No. of Violations in PCW	1
Case Priority	2	Enter x for Major Source (as defined in PP)	

Media-Program

x	Program Name(s)	Min	Max	Admin. Penalty Dollar Limit
x	Air/HW	\$0	\$10,000	
	Water Rights	\$0	\$5,000	
		\$0	\$2,500	
	Public Water Supply	\$50	\$1,000	
	Levees	\$0	\$1,000	
	Public Water Utilities	\$0	\$500	

Adjustments to Subtotal 1

Total Base Penalty forward (subtotal 1) \$40,000

Culpability (enhancement)

Does the respondent meet any of the culpability criteria? Yes No

Notes: No previous NOV's for same or similar violations

Adjustment amount (subtotal 2) \$0

Economic Benefit (enhancement)

Total of EB Amounts \$14,329
 EB Enhancement (percent) 0%
 Adjustment amount (subtotal 5) \$0

Approx. Cost of Compliance \$53,000

Good Faith Effort to Comply (reduction)

Timing of Action

Quality of Action	Before NOV	NOV to EDFRP or Order	Percent
Extraordinary			
Ordinary			0%
None of the above	x	<small>(mark only one; use small x)</small>	

Notes: Respondents do not meet the good faith criteria.

Adjustment amount (subtotal 3) \$0

Compliance History (enhancement)

Enter Percent 0 (enter number only; e.g., 30 for 30%)

Notes: There is no record of previous findings orders, judicial actions, or criminal convictions.

Adjustment amount (subtotal 4) \$0

Final Subtotal \$40,000

Other Factors as justice may require

Enter Adjustment Percentage (+/-) 0% (enter number only; e.g., -30 for -30%)

Amount \$0

Notes:
 (if more space is needed, increase row height)

Final Penalty Amount \$40,000

Final Assessed Penalty (including any statutory limit adj.) \$40,000

Payable Penalty

Enter Deferral Percentage 0% (enter number only; e.g., 20 for 20%)

Deferral \$0

Notes: No deferral because this is a non-expedited case.

Payable Penalty \$40,000

Screening Date	29-Dec-97	Docket Number	2004-0014-MLM-E	PCW
Respondent	Newell Recycling of San Antonio, L.P., Newell Recycling Co., Inc., Newell LTD., Newell Enterprises, Inc., Newell Products, Inc., and Newell International, Inc.			Pcly. rev. 1; SB 1876
ID Number(s)	RN102601804	PCW rev. 07/09/1999		
Media (Statute)	Air/IHW			
Enf. Coordinator	Merrilee Gerberding			
Violation Number	1			
Primary Rule Cite	30 Tex. Admin. Code § 101.4 and § 335.4			
Secondary Cite(s)	Tex. Health & Safety Code §§ 382.085(a) and 382.085(b) and Texas Water Code § 26.121			
Violation Description	<p>During air sampling conducted on February 24, 1998, TNRCC staff documented that emissions from Newell Recycling of San Antonio and Newell LTD. contained lead. TNRCC air sampling conducted on November 16, 1998 documented that emissions from Newell Industries contained lead. TNRCC solid waste sampling conducted on January 27, 1998 and February 2, 1999 document that baghouse dust from Newell Industries' foundry contained significantly elevated levels of lead. TNRCC inspections conducted on May 13, 1997, January 27, 1998, and January 29, 1999 documented that Newell Industries' baghouse dust was not being properly controlled and that baghouse dust was being emitted into the atmosphere. During TNRCC soil sampling events conducted on November 20, 1997, January 20-21, 1998, February 23-24, March 3-5, 1998, and April 15, 1999, the TNRCC documented lead contamination of the soil in and around the 500-800 blocks of Probandt Street and along Lone Star Boulevard near its intersection with Probandt Street.</p>			

Base Penalty \$10,000

Environmental, Property and Human Health Matrix				
Harm				
	Release	Major	Moderate	Minor
OR	Actual		x	
	Potential			
				Percent <input type="text" value="25%"/>
Programmatic Matrix				
	Falsification	Major	Moderate	Minor
				Percent <input type="text"/>
Matrix Notes	<p>Unauthorized discharges of industrial solid waste on the ground and emissions of baghouse dust containing lead have exposed human health or the environment to significant amounts of pollutants (lead) with no documented significant impact on human health or environmental receptors.</p>			
				Adjustment <input type="text" value="-7,500"/>
				Base Penalty Subtotal <input type="text" value="\$2,500"/>

Violation Events				
Number of Violation Events		<input type="text" value="16"/>		
mark only one; use 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 <input type="text" value="\$40,000"/>		
Events Notes	<p>Sixteen single events are recommended based on the sixteen sampling dates documenting contaminated soil or air.</p>			
Economic Benefit (EB) for this violation				
Estimated EB Amount (\$)		<input type="text" value="\$14,329"/>		
		Violation Final Penalty total <input type="text" value="\$40,000"/>		
		This Violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$40,000"/>		

ID Number(s)	RN102601804	Percent Interest	5.0	Years of Depreciation	15
Media [Statute]	Air/IHW				
Violation Number	1				
Item Description	Item Cost <small>No commas</small>	Date Required <small>00/00/00</small>	Final Date <small>00/00/00</small>	Yrs	Interest Saved
					Onetime Costs
					EB Amount

Delayed Costs						
Item Description	Item Cost <small>No commas</small>	Date Required <small>00/00/00</small>	Final Date <small>00/00/00</small>	Yrs	Interest Saved	Onetime Costs
Equipment	\$35,000	13-May-1997	1-May-2000	3.0	\$5,197	\$6,930
Buildings				0.0	\$0	\$0
Other (As needed)				0.0	\$0	\$0
Engineering/construction				0.0	\$0	\$0
Land				0.0	\$0	n/a
Record Keeping System				0.0	\$0	n/a
Training/Sampling				0.0	\$0	n/a
Remediation/Disposal	\$18,000	20-Nov-1997	1-May-2000	2.4	\$2,202	n/a
Permit Costs				0.0	\$0	n/a
Other (As Needed)				0.0	\$0	n/a
Notes for DELAYED costs	Estimated cost to remove contaminated soil and control baghouse dust emissions from date of first documented lead contamination to expected completion/compliance date.					

Avoided Costs						
Item Description	Item Cost <small>No commas</small>	Date Required <small>00/00/00</small>	Final Date <small>00/00/00</small>	Yrs	Interest Saved	Onetime Costs
Disposal				0.0	\$0	\$0
Personnel				0.0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0
Supplies/equip				0.0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0
Other (as needed)				0.0	\$0	\$0
Notes for AVOIDED costs						

Approx Cost of Compliance TOTAL

INSTRUCTIONS
Make entries only in yellow, double-lined cells.

TEX. WATER CODE chs. 7 and 26; and TEX. HEALTH & SAFETY CODE chs. 361 and 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondents, represented by Mr. David J. Tuckfield, Esq., appear before the Commission and together stipulate that:

1. Newell Recycling of San Antonio owns and operates a scrap metal shredding and recycling facility at 726 Probandt Street in San Antonio, Bexar County, Texas ("the Newell Recycling of San Antonio Operation").
2. Newell Recycling Co., Inc. (formerly known as Newell Salvage Company of San Antonio, Inc. prior to January 16, 1980) owned and operated facilities similar to those at the Newell Recycling of San Antonio Operation prior to Newell Recycling of San Antonio.
3. Newell Ltd. owns and operates a "shredder residue" reclamation operation located at 726 Probandt Street, San Antonio, Bexar County, Texas (the "Newell Ltd. Plant").
4. Newell Enterprises owned and operated the Newell Ltd. Plant prior to Newell Ltd.
5. Prior to 2000, Newell International owned and operated a metal sorting operation located at 501 Steves Avenue, San Antonio, Bexar County, Texas (the "Newell International Operation").
6. From January 1979 through 1984, Newell Products operated a lead battery recovery operation at 726 Probandt Street, San Antonio, Bexar County, Texas (the "Newell Products Operation").
7. 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 382, TEX. WATER CODE ch. 26 and TCEQ rules.
8. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondents are subject to the Commission's jurisdiction.
9. The Respondents received notices of the violations alleged in Section II ("Allegations") on or about March 24, 1998, March 23, 1998, July 7, 1998, and October 30, 1999.
10. This Agreed Order is entered solely for the purpose of resolving the disputed claims which are addressed herein between the Commission and the Respondents and is entered upon the recommendation of the Executive Director and the Respondents. In consenting to the entry

of this Agreed Order, no party admits allegations made by other parties. The Commission and the Respondents agree that this Agreed Order shall not be construed as evidence of any of the violations herein, either directly or indirectly, for any purpose however and whenever arising, in any judicial or administrative proceeding. The Commission and the Respondents agree that this Agreed Order shall not be used in any proceeding, whether judicial or administrative, except as detailed in Ordering Provision IV.6.

11. An administrative penalty in the amount of eighty-five thousand dollars (\$85,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Respondents have paid eighty-five thousand dollars (\$85,000.00) of the administrative penalty.
12. Except for an off-site cost recovery action, the payment of this eighty-five thousand dollar (\$85,000.00) administrative penalty resolves all matters pertaining to the violations alleged herein raised by any TCEQ inspection reports for the Respondents at the facilities described in this Agreed Order prior to the effective date of this Agreed Order, any Executive Director's Preliminary Reports and Petitions involving the Respondents at the facilities described in this Agreed Order, and all violations reported to the Commission or recorded by the Commission prior to the effective date of this Agreed Order which relate to matters concerning the prior activities of the Respondents at the facilities described in this Agreed Order which are (1) addressed in this Agreed Order, (2) raised in TCEQ Inspection Reports prior to the effective date of this Agreed Order, or (3) raised in any Executive Director's Preliminary Reports filed prior to the effective date of this Agreed Order. The Commission shall not be constrained in any manner from considering any administrative penalties for any matter: (1) not raised in TCEQ Inspection Reports issued prior to the effective date of this Agreed Order, (2) not raised in any Executive Director's Preliminary Reports filed prior to the effective date of this Agreed Order, (3) not adopted by the Commission as findings in this Agreed Order, or (4) not reported to the Commission or recorded by the Commission prior to the effective date of this Agreed Order. Furthermore, the Commission shall not be precluded from enforcement of the Agreed Order under Docket No. 1998-0235-MLM-E approved by the Commission May 26, 1999, and effective June 8, 1999.
13. 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.
14. The Executive Director of the TCEQ and the Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

15. 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 Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
16. 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.
17. 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

Respondents are alleged to have violated:

1. 30 TEX. ADMIN. CODE §§ 101.4 and 335.4, TEX. HEALTH & SAFETY CODE § 382.085(a) and 382.085(b), and TEX. WATER CODE § 26.121. During air sampling conducted on February 24, 1998, TNRCC staff documented that emissions from Newell Recycling of San Antonio and Newell LTD contained lead. TNRCC air sampling conducted on November 16, 1998 documented that emissions from Newell Industries contained lead. TNRCC solid waste sampling conducted on January 27, 1998 and February 2, 1999 document that baghouse dust from Newell Industries' foundry contained significantly elevated levels of lead. TNRCC inspections conducted on May 13, 1997, January 27, 1998, and January 29, 1999 documented that Newell Industries' baghouse dust was not being properly controlled and that baghouse dust was being emitted into the atmosphere. During TNRCC soil sampling events conducted on November 20, 1997, January 20-21, 1998, February 23-24, March 3-5, 1998, and April 15, 1999, the TNRCC documented lead contamination of the soil in and around the 500-800 blocks of Probandt Street and along Lone Star Boulevard near its intersection with Probandt Street.
2. Newell Recycling of San Antonio, L.P. is alleged to have violated TCEQ Order Docket No. 1998-0235-MLM-E, Provision IV.B.1. by releasing visible emissions from the shredder in excess of 5% opacity for any 6 minute period, as measured by the Environmental Protection Agency ("EPA") Reference Method 9, Appendix A, 40 Code of Federal Regulations ("CFR") Part 60, as documented during an inspection on October 1, 1999. Specifically, the opacity of the visible emissions was 25% for the total 18-minute period, including 38% for the first 6 minute period.

3. Newell Ltd. is alleged to have violated TEX. WATER CODE § 26.121 and 30 TEX. ADMIN. CODE § 335.4 by discharging industrial solid waste into or adjacent to the waters in the State, as documented during inspections on April 3, 1997, January 27, 1998, January 29, 1998, June 9, 1999, and June 11, 1999. Specifically, the TCEQ documented unauthorized discharges of iron, chromium, aluminum, arsenic, barium, cadmium, calcium, cobalt, copper, lead, magnesium, manganese, mercury, molybdenum, nickel, sodium, vanadium, and zinc.

III. DENIALS

The Respondents generally and specifically deny each allegation in Section II ("Allegations"). The Respondents assert that they have affirmative defenses in law, fact and equity to each of the allegations. The Respondents further assert that they have always operated their facilities at or above industry standards, and that they currently operate facilities in San Antonio that are state of the art and exceed current state and federal regulatory requirements for air emissions.

IV. ORDER

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 11 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering 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: Newell Recycling of San Antonio, L.P.; Newell Recycling Co., Inc.; Newell Ltd.; Newell Enterprises, Inc.; Newell Products, Inc.; and Newell International, Inc.; Docket No. 2004-0014-MLM-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

2. Newell Ltd. shall undertake the following technical requirement:
 - a. Within 120 days after the effective date of this Agreed Order, complete a site assessment with verification sampling for the contamination resulting from

the allegations in Section II., Paragraph 3. above, and submit an Affected Property Assessment Report (APAR) pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. The areas to be investigated for the site assessment shall include, but are not limited to, areas formerly documented to have contamination and potential for contamination, including the soil, sediment, groundwater and surface water. The APAR shall document the procedures, conclusions and all information required by 30 TEX. ADMIN. CODE Chapter 350, subch. C (relating to affected property assessment) and 30 TEX. ADMIN. CODE Chapter 350, subch. D (relating to development of protective concentration levels). The APAR shall contain all information required by 30 TEX. ADMIN. CODE § 350.91 including a comparison of the Constituents of Concern (COC) concentrations with the Critical Protective Concentration Levels (CPCL), pursuant to 30 TEX. ADMIN. CODE §§ 350.91(b)(12) and 350.79, to determine if response actions are required. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program 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. Upon approval of the Executive Director, Newell Ltd. may demonstrate compliance with this remedial ordering provision by submitting documentation that the required work has been completed as part of the remedial activities currently being conducted at the Newell Ltd. Plant under the terms of TCEQ Agreed Order Docket No. 1998-0235-MLM-E.

- b. Newell Ltd. shall submit all correspondence, reports, and documentation required by this Ordering Provision 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:

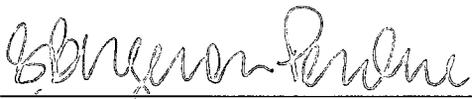
Richard Garcia, Regional Director
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Respondents' operations referenced in this Agreed Order.
4. If the Respondents fail to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents 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 the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

4/4/2008

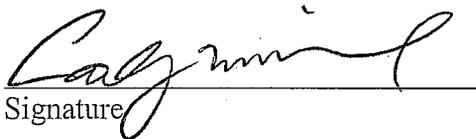
Date

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

8/31/06

Date

Carlton J. Nichols

Name (Printed or typed)

Vice President

Title

Authorized representative of

Newell Recycling of San Antonio, L.P., Newell Recycling Co., Inc., Newell Ltd., Newell Enterprises, Inc., Newell Products, Inc. and Newell International, Inc.