

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2006-0395-MSW-E TCEQ ID: RN102938321 CASE NO.: 29047
RESPONDENT NAME: GARLAND KIMBRELL DBA TIMBER WE'LL TAKE IT**

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 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 type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 2711 114th Street in Lubbock, Lubbock County

TYPE OF OPERATION: Recycling center

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on November 10, 2008. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Mr. Clinton Sims, Waste Enforcement Section, MC 128, (512) 239-6933
TCEQ Regional Contact: Mr. Jeff Bertl, Lubbock Regional Office, MC R-2, (806) 792-7092
Respondent: Mr. Garland Kimbrell, Timber We'll Take It, 2711 114th Street, Lubbock, Texas 79423
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 15, 2006</p> <p>Date of NOE Relating to this Case: March 7, 2006</p> <p>Background Facts: The EDP RP was filed on December 21, 2006. On January 18, 2007 the Respondent filed a hearing request, and the matter was referred to SOAH. An Agreed Order was signed on August 1, 2008. An amended Agreed Order was signed on August 29, 2008 which provided for a longer period to complete the technical requirements.</p> <p>Current Compliance Status: The Respondent is not yet in compliance.</p> <p>MSW:</p> <p>1. Failed to recycle or transfer to a different site for recycling, at least 50% by weight or volume of each material accumulated at the beginning of the period, during each subsequent 6-month period [30 TEX. ADMIN. CODE § 328.4(b)(3)(A)].</p> <p>2. Failed to obtain financial assurance and submit a closure cost estimate to the TCEQ [30 TEX. ADMIN. CODE §§ 37.921 and 328.5(c)(1) and (d)].</p>	<p>Total Assessed: \$2,100</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$100/\$2,000</p> <p>The Respondent has paid \$100 of the administrative penalty. The remaining amount of \$2,000 of the administrative penalty shall be payable in 20 monthly payments of \$100 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>Technical Requirements: The Respondent shall undertake the following technical requirements:</p> <p>1. Within 180 days: a. Establish and maintain current financial assurance for closure of the Facility; and b. Recycle or transfer to a different site for recycling, at least 50% by weight or volume of each material accumulated at the beginning of the period during each subsequent 6-month recycling period.</p> <p>2. Within 195 days, submit written certification to demonstrate compliance with Ordering Provisions 1.a. and b.</p>

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision May 19, 2005

DATES	Assigned	03-Apr-2006	Screening	11-Apr-2006	EPA Due	
	PCW	17-Jul-2006				

RESPONDENT/FACILITY INFORMATION

Respondent: Garland Kimbrell dba Timber We'll Take It

Reg. Ent. Ref. No. RN102938321

Facility/Site Region: 2-Lubbock Major/Minor Source: Minor Source

CASE INFORMATION

Enf./Case ID No.	29047	No. of Violations	2
Docket No.	2006-0395-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste <input checked="" type="checkbox"/>	Enf. Coordinator	Alison Echlin
Multi-Media		EC's Team	Enforcement Team 8 <input checked="" type="checkbox"/>
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$2,000

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** \$100
 5% Enhancement

Notes: The Respondent received one NOV for the same or similar violation.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

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

Economic Benefit **Subtotal 6** \$0
 0% Enhancement*

Total EB Amounts	\$2,933	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$41,212	

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$2,100

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 \$2,100

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$2,100

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

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

Notes: Deferral not offered for non-expedited settlement

PAYABLE PENALTY \$2,100

Screening Date 11-Apr-2006	Docket No. 2006-0395-MSW-E	PCW
Respondent Garland Kimbrell dba Timber We'll Take It	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 29047	<i>PCW Revision May 19, 2005</i>	
Reg. Ent. Reference No. RN102938321		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Alison Echlin		

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 disclosed)</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) 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 for the same or similar violation.

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

Screening Date	11-Apr-2006	Docket No.	2006-0395-MSW-E	PCW
Respondent	Garland Kimbrell dba Timber We'll Take It		Policy Revision 2 (September 2002)	
Case ID No.	29047		PCW Revision May 19, 2005	
Reg. Ent. Reference No.	RN102938321			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Alison Echlin			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code § 328.4(b)(3)(A)			
Secondary Rule Cite(s)				
Violation Description	Failure to recycle or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six month recycling period, as documented during an investigation conducted on February 15, 2006. Specifically, the Respondent failed to recycle 50% by weight or volume of approximately 66,000 cubic yards of accumulated brush, tree trimmings, large trees, wood chips and sawdust.			
Base Penalty	\$10,000			

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

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

>> **Programmatic Matrix**

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

Matrix Notes
Human health or the environment could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

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	X
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

One quarterly event is recommended from the February 15, 2006 investigation date to the April 11, 2006 screening date.

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: Garland Kimbrell dba Timber We'll Take It
Case ID No.: 29047
Reg. Ent. Reference No.: RN102938321
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				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$40,000	15-Feb-2006	15-Dec-2006	0.8	\$1,660	n/a	\$1,660
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: This is the estimated cost to recycle or transfer to a different site for recycling at least 50% by weight or volume of material accumulated calculated from the investigation date to the projected 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 \$40,000
TOTAL \$1,660

Screening Date 11-Apr-2006 **Docket No.** 2006-0395-MSW-E **PCW**

Respondent Garland Kimbrell dba Timber We'll Take It *Policy Revision 2 (September 2002)*

Case ID No. 29047 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN102938321

Media [Statute] Municipal Solid Waste

Enf. Coordinator Alison Echlin

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
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> **Programmatic Matrix**

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

Percent

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 <input type="text" value="\$1,273"/>	Violation Final Penalty Total <input type="text" value="\$1,050"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,050"/>	

Economic Benefit Worksheet

Respondent: Garland Kimbrell dba Timber We'll Take It
Case ID No.: 29047
Reg. Ent. Reference No.: RN102938321
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
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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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$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]	\$1,212	15-Feb-2006	06-Jan-2007	1.0	\$61	\$1,212	\$1,273
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs: This is the estimated cost of financial assurance calculated from the investigation date to the projected date of compliance.

Approx. Cost of Compliance \$1,212
TOTAL \$1,273

Compliance History

Customer/Respondent/Owner-Operator:	CN601490048 Garland Kimbrell	Classification: AVERAGE	Rating: 0.25
Regulated Entity:	RN102938321 TIMBER WE'LL TAKE IT	Classification: AVERAGE	Site Rating: 0.2
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER	100015
	MUNICIPAL SOLID WASTE PROCESSING	REGISTRATION	100015
Location:	2711 114TH ST, LUBBOCK, TX, 79423	Rating Date: 9/1/2005 Repeat Violator: NO	
TCEQ Region:	REGION 02 - LUBBOCK		
Date Compliance History Prepared:	May 05, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 04, 2001 to April 04, 2006		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Alison Echlin</u>	Phone:	<u>512-239-3308</u>

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 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 judgments, 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. (CEEDS Inv. Track. No.)
- | | | | |
|---|------------|----------|--|
| 1 | 04/26/2004 | (270215) | |
| | N/A | | |
| 2 | 03/03/2004 | (262841) | |
| 3 | 02/23/2006 | (455631) | |
| 4 | 07/01/2003 | (113007) | |
- E. Written notices of violations (NOV). (CEEDS Inv. Track. No.)
- | | | | |
|--------------|--|----------|-----------------------|
| Date: | 03/03/2004 | (262841) | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 328, SubChapter A 328.4(b)(3)(A) | | |
| Description: | The regulated entity failed to recycle at least 50% of the wood material in inventory as of June 9, 2003 during the subsequent six month period. | | |
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING GARLAND
KIMBRELL DBA TIMBER WE'LL
TAKE IT, RN102938321

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2006-0395-MSW-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 Garland Kimbrell dba Timber We'll Take It ("Mr. Kimbrell") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Kimbrell, appear before the Commission and together stipulate that:

1. Mr. Kimbrell owns and operates a recycling center at 2711 114th Street in Lubbock, Lubbock 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 ch. 361 and TCEQ rules.
3. The Commission and Mr. Kimbrell agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Kimbrell is subject to the Commission's jurisdiction.
4. Mr. Kimbrell received notice of the violations alleged in Section II ("Allegations") on or about March 12, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Kimbrell of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of two thousand one hundred dollars (\$2,100.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Kimbrell has paid one hundred dollars (\$100.00) of the administrative penalty. The remaining amount of two thousand dollars (\$2,000.00) of the administrative penalty shall be payable in 20 monthly payments of one hundred dollars (\$100.00) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Kimbrell fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. Kimbrell to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Kimbrell to timely and satisfactorily comply with all of the terms of this Agreed Order.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Kimbrell 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. Kimbrell 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. Kimbrell is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 328.4(b)(3)(A) by failing to recycle or transfer to a different site for recycling, at least 50% by weight or volume of each material accumulated at the beginning of the period, during each subsequent 6-month period as documented during an investigation on February 15, 2006.

2. 30 TEX. ADMIN. CODE §§ 37.921 and 328.5(c)(1) and (d) by failing to obtain financial assurance and submit a closure cost estimate to the TCEQ as documented during an investigation on February 15, 2006.

III. DENIALS

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

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Kimbrell pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Kimbrell's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective 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: Garland Kimbrell dba Timber We'll Take It, Docket No. 2006-0395-MSW-E" 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. Kimbrell shall undertake the following technical requirements:
 - a. Within 180 days after the effective date of this Agreed Order Mr. Kimbrell shall:
 - i. Establish and maintain current financial assurance for closure of the Facility;
 - ii. Recycle or transfer to a different site for recycling, at least 50% by weight or volume of each material accumulated at the beginning of the period during each subsequent 6-month recycling period; and
 - b. Within 195 days after the effective date of this Agreed Order, Mr. Kimbrell shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 2.a.i. and ii.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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

and

Jeffery Bertl, Waste Section Manager
Texas Commission on Environmental Quality
Lubbock Regional Office
3113 34th Street
Lubbock, Texas 79410-3227

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

[Handwritten Signature]

For the Executive Director

10/19/08

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.

Garland Kimbrell

Signature

8-29-08

Date

GARLAND KIMBRELL

Name (Printed or typed)

Owner

Title

Authorized representative of

Garland Kimbrell dba Timber We'll Take It