

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2007-0679-MSW-E TCEQ ID: RN103760864 CASE NO.: 33304**

**RESPONDENT NAME: SAN ANTONIO DISPOSAL INTERESTS, L.P. DBA TARGET BRUSH AND GRINDING LLC**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 24111 US Highway 281 South, San Antonio, Bexar County</p> <p><b>TYPE OF OPERATION:</b> Brush mulching operation</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on August 25, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Mr. Michael Meyer, Waste Enforcement Division, MC 128, (512) 239-4492  <b>TCEQ Regional Contact:</b> Mr. Joel Anderson, San Antonio Regional Office, MC R-13, (210) 490-3096  <b>Respondent:</b> Mr. Darrell Rogers, President, San Antonio Disposal Interests, L.P., 701 North Post Oak Road, Ste. 207, Houston, Texas 77024  <b>Respondent's Attorney:</b> Mr. Gerry Pels, Attorney, Sutherland Asbill &amp; Brennan LLP, 2 Houston Center, Ste. 2200, 909 Fannin Street, Houston, Texas 77010</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input checked="" type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> January 26, 2007</p> <p><b>Date of NOE Relating to this Case:</b> March 20, 2007</p> <p><b>Background Facts:</b> The case was received by the Litigation Division on August 13, 2007. Settlement was achieved and a signed Agreed Order was received on June 23, 2008.</p> <p><b>Current Compliance Status:</b> All material at the Facility has been properly removed and disposed of. The Respondent no longer owns the Facility.</p> <p><b>MSW:</b> Failed to notify the TCEQ prior to the commencement of new mulching and recycling operations [30 TEX. ADMIN. CODE § 382.5(b)].</p>	<p><b>Total Assessed:</b> \$3,060</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$3,060</p> <p>The Respondent has paid the full amount of the administrative penalty.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Executive Director recognizes that the Respondent ceased accepting recyclable material, sold all of the recyclable material, and no longer owns the Facility.</p>



# Penalty Calculation Worksheet (PCW)

<b>DATES</b>	Assigned	2-Apr-2007	Screening	25-Apr-2007	EPA Due	
	PCW	10-Mar-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	San Antonio Disposal Interests, L.P. dba Target Brush and Grinding LLC		
Reg. Ent. Ref. No.	RN103760864		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	33304	No. of Violations	1
Docket No.	2007-0679-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Colin Barth
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** *Subtotal 1* **\$3,000**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** 2% Enhancement *Subtotals 2, 3, & 7* **\$60**

Notes: The respondent has one previous NOV for dissimilar violations at this site in the past five years.

**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 x)

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

**Total EB Amounts** \$58 **0% Enhancement\*** *Subtotal 6* **\$0**  
**Approx. Cost of Compliance** \$200 *\*Capped at the Total EB \$ Amount*

**SUM OF SUBTOTALS 1-7** *Final Subtotal* **\$3,060**

**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* **\$3,060**

**STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty* **\$3,060**

**DEFERRAL** 0% Reduction *Adjustment*

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** **\$3,060**

Screening Date 25-Apr-2007

Docket No. 2007-0679-MSW-E

PCW

Respondent San Antonio Disposal Interests, L.P. dba Target Brush ar

Policy Revision 2 (September 2002)

Case ID No. 33304

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN103760864

Media [Statute] Municipal Solid Waste

Enf. Coordinator Colin Barth

**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 (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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) 2%

>> 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 has one previous NOV for dissimilar violations at this site in the past five years.

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

Screening Date 25-Apr-2007

Docket No. 2007-0679-MSW-E

PCW

Respondent San Antonio Disposal Interests, L.P. dba Target Brush and Grinding LLC

Policy Revision 2 (September 2002)

Case ID No. 33304

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN103760864

Media [Statute] Municipal Solid Waste

Enf. Coordinator Colin Barth

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 328.5(b)

Violation Description

Failed to notify the agency prior to the commencement of new operations as documented during an investigation conducted on January 26, 2007. Specifically, the respondent began mulching and recycling operations without notification.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

207 Number of violation days

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,000

Three quarterly events are recommended from the September 30, 2006 date in which the Respondent purchased the property to the April 25, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$58

Violation Final Penalty Total \$3,060

This violation Final Assessed Penalty (adjusted for limits) \$3,060

## Economic Benefit Worksheet

**Respondent:** San Antonio Disposal Interests, L.P. dba Target Brush and Grinding LLC  
**Case ID No.:** 33304  
**Reg. Ent. Reference No.:** RN103760864  
**Media:** Municipal Solid Waste  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

### 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	\$200	1-Jan-2003	1-Oct-2008	5.8	\$58	n/a	\$58
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to notify the agency concerning mulching and recycling operations. The Date Required is the approximate date operations began 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

\$200

**TOTAL**

\$58

# Compliance History

Customer/Respondent/Owner-Operator: CN602532335 San Antonio Disposal Interests, L.P. Classification: AVERAGE Rating: 7.50  
 Regulated Entity: RN103760864 Target Brush and Grinding LLC Classification: AVERAGE Site Rating: 7.50  
 ID Number(s): EDWARDS AQUIFER REGISTRATION 13-03060902  
 EDWARDS AQUIFER REGISTRATION 13-03060902A  
 EDWARDS AQUIFER REGISTRATION 13-03060902  
 Location: 24411 US HIGHWAY 281 S, SAN ANTONIO, TX, 78264 Rating Date: September 01 06 Repeat Violator: NO  
 TCEQ Region: REGION 13 - SAN ANTONIO  
 Date Compliance History Prepared: April 30, 2007  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: April 30, 2002 to April 30, 2007  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Colin Barth Phone: 512 239 0086

## 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? Yes
3. If Yes, who is the current owner? San Antonio Disposal Interests, L.P.
4. If Yes, who was/were the prior owner(s)? Target Brush & Grinding, LLC
5. When did the change(s) in ownership occur? 30-Sep-06

### 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 07/31/2003 (145430)
  - 2 03/27/2007 (538629)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	07/31/2003	(145430)		
Self Report?	NO		Classification:	Major
Citation:	30 TAC Chapter 213, SubChapter A 213.4(a)(1)			
Description:	Failure to submit a Water Pollution Abatement Plan.			
Self Report?	NO		Classification:	Major
Citation:	30 TAC Chapter 213, SubChapter A 213.4(a)(1)			
Description:	30 TAC Chapter 213, SubChapter A 213.4(a)[G]			
Description:	Failure to obtain approval for the placement of three above ground diesel storage tanks found on site. Each tank is estimated at a capacity of 1000 gallons.			
Self Report?	NO		Classification:	Major
Citation:	TWC Chapter 26 26.121[G]			
Description:	Failure to prevent contamination of the ground surrounding the diesel tanks.			
- 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  
SAN ANTONIO DISPOSAL  
INTERESTS, L.P. DBA TARGET  
BRUSH AND GRINDING LLC;  
RN103760864

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2007-0679-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 San Antonio Disposal Interests, L.P. dba Target Brush and Grinding LLC (“San Antonio Disposal”) 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 San Antonio Disposal, represented by Gerry Pels of the law firm of Sutherland Asbill & Brennan LLP, appear before the Commission and together stipulate that:

1. San Antonio Disposal owned and operated a brush mulching operation located at 24111 US Highway 281 South in San Antonio, Bexar County, Texas (the “Facility”). The Facility involved the management of recyclable material as defined in 30 TEX. ADMIN. CODE ch. 330.
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 San Antonio Disposal agree that the Commission has jurisdiction to enter this Agreed Order, and that San Antonio Disposal is subject to the Commission’s jurisdiction.
4. San Antonio Disposal received notice of the violations alleged in Section II (“Allegations”) on or about March 25, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by San Antonio Disposal of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of three thousand sixty dollars (\$3,060.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). San Antonio Disposal has paid three thousand sixty dollars (\$3,060.00) of the administrative penalty.
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 San Antonio Disposal agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that San Antonio Disposal ceased accepting recyclable material, sold all of the recyclable material, and no longer owns or operates the Facility.
10. 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 San Antonio Disposal has not complied with one or more of the terms or conditions in this Agreed Order.
11. 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.
12. 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

1. During an investigation conducted on January 26, 2007, a TCEQ San Antonio Regional Office investigator documented that mulching and recycling operations commenced at the Facility without prior notification to the TCEQ, in violation of 30 TEX. ADMIN. CODE § 328.5(b).

## III. DENIALS

1. San Antonio Disposal generally denies each allegation in Section II ("Allegations").

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that San Antonio Disposal pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and San Antonio Disposal'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.
2. The provisions of this Agreed Order shall apply to and be binding upon San Antonio Disposal.
3. This Agreed Order, issued by the Commission, shall not be admissible against San Antonio Disposal 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.
4. 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.
5. 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 San Antonio Disposal, or three days after the date on which the Commission mails notice of the Order to San Antonio Disposal, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

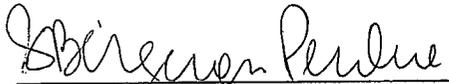
SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Commission



6/22/08

For the Executive Director

Date

For the Executive Director

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 indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that 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 San Antonio Disposal's failure to timely pay the penalty amount, may result in:

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

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

Eric Khan  
Signature

6/23/2008  
Date

Eric Khan  
Name (Printed or typed)

CFO  
Title

San Antonio Disposal Interests, L.P. dba Target Brush and Grinding, LLC

San Antonio Disposal Interests, L.P. dba Target Brush and Grinding, LLC