

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1518-MSW-E TCEQ ID: RN104443767 CASE NO.: 34649**  
**RESPONDENT NAME: SMITH COUNTY RECYCLING, L.L.C.**  
**DBA DINGLER ROAD RECYCLING CENTER**

<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 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:** 12188 County Road 1114, Tyler, Smith County

**TYPE OF OPERATION:** Wood recycling facility

**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 January 12, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. John Shelton., Waste Enforcement Section, MC 128, (512) 239-2563

**TCEQ Regional Contact:** Mr. Michael Brashear., Tyler Regional Office, MC R-5, (903) 535-5176

**Respondent:** Mr. Ben E. Jarvis, Manager, Smith County Recycling, L.L.C., 326 S. Fannin Avenue, Tyler, Texas 75702-7320

**Respondent's Attorney:** Mr. Newell Jarvis, Jarvis Law Firm, 326 South Fannin, Tyler, Texas 75702-7320.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input 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(s) of Investigation Relating to this Case:</b> July 16, 2007</p> <p><b>Date of NOE Relating to this Case:</b> August 24, 2007</p> <p><b>Background Facts:</b> The EDPRP was filed on January 25, 2008. The case was referred to SOAH on April 2, 2008. A signed Agreed Order was received on October 31, 2008.</p> <p><b>Current Compliance Status:</b> The respondent has ceased accepting materials on site, and is in the process of removing the accumulated materials.</p> <p><b>MSW:</b></p> <ol style="list-style-type: none"> <li>Failed to provide updates or changes to information contained in the facility report within 90 days of the effective date of the change [30 TEX. ADMIN. CODE § 328.5(b)(4)].</li> <li>Failed to recycle or transfer to a different site for recycling during each subsequent six-month period at least 50% by weight or volume of the material accumulated at the beginning of the period [30 TEX. ADMIN. CODE § 328.4(b)(3)].</li> <li>Failed to have a fire prevention and suppression plan [30 TEX. ADMIN. CODE § 328.5(h)].</li> <li>Failed to establish and maintain financial assurance for closure of a recycling facility that stores combustible material outdoors [30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d)].</li> </ol>	<p><b>Total Assessed:</b> \$15,371</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$15,371</p> <p>The Respondent has paid the administrative penalty in full.</p> <p><b>Site Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input 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>Corrective Action Taken:</b> The Executive Director recognizes that Smith County Recycling submitted documentation demonstrating acceptable financial assurance for the closure of the Facility on October 18, 2008.</p> <p><b>Ordering Provisions:</b> The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 15 days, update information contained in the facility report.</li> <li>Within 30 days:       <ol style="list-style-type: none"> <li>Develop and implement a fire prevention and suppression plan that shall be made available to the local fire prevention authority with jurisdiction over the facility for review and coordination;</li> <li>Submit documentation demonstrating that at least 50% by weight or volume of the material accumulated at the Facility for recycling during the 6-month period preceding the effective date of this Order is recycled or transferred to a different site for recycling; or</li> <li>In lieu of 1 through 2.b., cease accepting waste and recyclable materials and remove all accumulated materials and dispose of them at an authorized facility.</li> </ol> </li> <li>Within 45 days, submit written certification to demonstrate compliance with these Ordering Provisions.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

<b>DATES</b>	Assigned	28-Aug-2007	Screening	14-Sep-2007	EPA Due	
	PCW	13-Oct-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Smith County Recycling, L.L.C. dba Dingler Road Recycling Center		
Reg. Ent. Ref. No.	RN104443767		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	34649	No. of Violations	4	
Docket No.	2007-1518-MSW-E	Order Type	1660	
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	John Shelton	
Multi-Media		EC's Team	Enforcement Team 7	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$12,000</b>
---	-------------------	-----------------

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

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

<b>Compliance History</b>	-10% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>-\$1,200</b>
---------------------------	------------------	--------------------------------	-----------------

Notes: There were no previous NOV's for the same or similar violations. The Respondent receives a ten percent reduction for its classification as a high performer.

<b>Culpability</b>	No	0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
--------------------	----	----------------	-------------------	------------

Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	<b>\$0</b>
------------------------------------	--------------	-------------------	------------

	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.

<b>Total EB Amounts</b>	\$5,842	0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
<b>Approx. Cost of Compliance</b>	\$38,640	*Capped at the Total EB \$ Amount		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$10,800</b>
-----------------------------	-----------------------	-----------------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	42.32%	<b>Adjustment</b>	<b>\$4,571</b>
---	--------	-------------------	----------------

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

Notes: Recommended adjustment to capture the avoided costs associated with violation number 4.

<b>Final Penalty Amount</b>	<b>\$15,371</b>
-----------------------------	-----------------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$15,371</b>
-----------------------------------	-------------------------------	-----------------

<b>DEFERRAL</b>	0% Reduction	<b>Adjustment</b>	<b>\$0</b>
-----------------	--------------	-------------------	------------

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.

<b>PAYABLE PENALTY</b>	<b>\$15,371</b>
------------------------	-----------------

Screening Date 14-Sep-2007

Docket No. 2007-1518-MSW-E

PCW

Respondent Smith County Recycling, L.L.C. dba Dingler Road Recycl

Policy Revision 2 (September 2002)

Case ID No. 34649

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN104443767

Media [Statute] Municipal Solid Waste

Enf. Coordinator John Shelton

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	0	0%
	Other written NOV's	0	0%
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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

There were no previous NOV's for the same or similar violations. The Respondent receives a ten percent reduction for its classification as a high performer.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

<b>Screening Date</b> 14-Sep-2007	<b>Docket No.</b> 2007-1518-MSW-E	<b>PCW</b>
<b>Respondent</b> Smith County Recycling, L.L.C. dba Dingler Road Recycling Cent	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 34649	<i>PCW Revision June 26, 2007</i>	
<b>Reg. Ent. Reference No.</b> RN104443767		
<b>Media [Statute]</b> Municipal Solid Waste		
<b>Enf. Coordinator</b> John Shelton		
<b>Violation Number</b>	1	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 328.5(b)(4)	
<b>Violation Description</b>	<p>Failed to provide updates or changes to information contained in the facility report within 90 days of the effective date of the change, as documented during an investigation conducted on July 16, 2007. Specifically, Smith County Recycling's Notice of Intent to Operate a Recycling Facility states that for clean timber and brush, the average monthly acceptance rate is 15 tons and the maximum storage amount is 120 tons. However, from January 2005 through June 2005, the average monthly acceptance rate was 2,436.5 cubic yards (717 tons) and the storage rate was over 14,619 cubic yards (4,300 tons). Currently, Smith County Recycling is storing approximately 76,068 cubic yards (12,678 tons) of combustible waste material. Also, Smith County Recycling has 100,000 cubic yards of broken concrete stockpiled on site, but has failed to notify as a recycler of concrete and asphalt scrap.</p>	
	<b>Base Penalty</b>	\$10,000

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

OR	<b>Harm</b>				
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
		<b>Percent</b>	0%		

**>> Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	
	<input type="text"/>	X	<input type="text"/>	<input type="text"/>	
		<b>Percent</b>	10%		
<b>Matrix Notes</b>	100% of the rule requirement was not met.				

**Adjustment**

**Violation Events**

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="60"/>	Number of violation days
mark only one with an 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="text"/>		<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>

One single event is recommended.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$4"/>	Violation Final Penalty Total <input type="text" value="\$1,281"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,281"/>	

<b>Screening Date</b> 14-Sep-2007	<b>Docket No.</b> 2007-1518-MSW-E	<b>PCW</b>		
<b>Respondent</b> Smith County Recycling, L.L.C. dba Dingler Road Recycling Cente	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 34649	<i>PCW Revision June 26, 2007</i>			
<b>Reg. Ent. Reference No.</b> RN104443767				
<b>Media [Statute]</b> Municipal Solid Waste				
<b>Enf. Coordinator</b> John Shelton				
<b>Violation Number</b> <input type="text" value="2"/>				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 328.4(b)(3)			
<b>Violation Description</b>	Failed to recycle or transfer to a different site, for recycling during each subsequent six-month period at least 50% by weight or volume of the material accumulated at the beginning of the period, as documented during an investigation conducted on July 16, 2007. Specifically, beginning August 2005, Smith County Recycling had accumulated 23,969 cubic yards of wood based on records documenting the amount of wood received from October 2004 through July 2005. The Facility's records indicated that only 660 cubic yards had been removed by the end of January 2006, six months later.			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Potential</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b> <input type="text" value="25%"/>
<b>&gt;&gt; Programmatic Matrix</b>				
<b>Falsification</b>				
<b>Major</b>	<b>Moderate</b>	<b>Minor</b>		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>	
<b>Matrix Notes</b>	Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of this violation.			
<b>Adjustment</b>		<input type="text" value="\$7,500"/>		
			<input type="text" value="\$2,500"/>	
<b>Violation Events</b>				
<b>Number of Violation Events</b> <input type="text" value="2"/>		<input type="text" value="60"/> <b>Number of violation days</b>		
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$5,000"/>	
	monthly	<input checked="" type="checkbox"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
single event	<input type="text"/>			
Two monthly events are recommended from the July 16, 2007 investigation date to the September 14, 2007 screening date.				
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b> <input type="text" value="\$601"/>		<b>Violation Final Penalty Total</b> <input type="text" value="\$6,405"/>		
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$6,405"/>		

<b>Screening Date</b> 14-Sep-2007	<b>Docket No.</b> 2007-1518-MSW-E	<b>PCW</b>
<b>Respondent</b> Smith County Recycling, L.L.C. dba Dingler Road Recycling Cente	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 34649	<i>PCW Revision June 26, 2007</i>	
<b>Reg. Ent. Reference No.</b> RN104443767		
<b>Media [Statute]</b> Municipal Solid Waste		
<b>Enf. Coordinator</b> John Shelton		
<b>Violation Number</b>	3	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 328.5(h)	
<b>Violation Description</b>	Failed to have a fire prevention and suppression plan, as documented during an investigation conducted on July 16, 2007.	
<b>Base Penalty</b>		\$10,000

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

<b>OR</b>	<b>Harm</b>					
	<b>Release</b>	Major	Moderate		Minor	
	<b>Actual</b>	<input type="text"/>	<input type="text"/>		<input type="text"/>	
	<b>Potential</b>	X	<input type="text"/>	<input type="text"/>	<b>Percent</b>	25%

**>> Programmatic Matrix**

	Major	Moderate	Minor		
<b>Falsification</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b>	0%

**Matrix Notes** Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of this violation.

**Adjustment** \$7,500

\$2,500

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	X
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty** \$5,000

Two monthly events are recommended from the July 16, 2007 investigation date to the September 14, 2007 screening date.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$437"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$6,405"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$6,405"/>	

<b>Screening Date</b> 14-Sep-2007	<b>Docket No.</b> 2007-1518-MSW-E	<b>PCW</b>		
<b>Respondent</b> Smith County Recycling, L.L.C. dba Dingler Road Recycling Cente	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 34649	<i>PCW Revision June 26, 2007</i>			
<b>Reg. Ent. Reference No.</b> RN104443767				
<b>Media [Statute]</b> Municipal Solid Waste				
<b>Enf. Coordinator</b> John Shelton				
<b>Violation Number</b> <input type="text" value="4"/>				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 37.921 and 328.5(d)			
<b>Violation Description</b>	Failed to establish and maintain financial assurance for closure of a recycling facility that stores combustible material outdoors, as documented during an investigation conducted on July 16, 2007.			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="10%"/>	
<b>Matrix Notes</b>	100% of the rule requirement was not met.			
<b>Adjustment</b>		<input type="text" value="\$9,000"/>		
		<input type="text" value="\$1,000"/>		
<b>Violation Events</b>				
<b>Number of Violation Events</b>		<input type="text" value="1"/>	<input type="text" value="60"/>	
		<b>Number of violation days</b>		
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b>	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
single event	<input checked="" type="checkbox"/>	<input type="text" value="\$1,000"/>		
One single event is recommended.				
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		<input type="text" value="\$4,800"/>	<b>Violation Final Penalty Total</b>	
		<input type="text" value="\$1,281"/>		
<b>This violation Final Assessed Penalty (adjusted for limits)</b>			<input type="text" value="\$1,281"/>	

## Economic Benefit Worksheet

**Respondent** Smith County Recycling, L.L.C. dba Dingler Road Recycling Center

**Case ID No.** 34649

**Reg. Ent. Reference No.** RN104443767

**Media** Municipal Solid Waste

**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

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				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]	\$4,571	16-Aug-2007	30-May-2008	1.0	\$229	\$4,571	\$4,800
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to obtain and maintain financial assurance. Date Required is the investigation date and the Final Date is the estimated date of compliance.

Approx. Cost of Compliance

\$4,571

TOTAL

\$4,800

# Compliance History

Customer/Respondent/Owner-Operator:	CN602733693 Smith County Recycling, L.L.C.	Classification: 0.00	Rating: High
Regulated Entity:	RN104443767 DINGLER RD RECYCLING CENTER	Classification: 0.00	Site Rating: High
ID Number(s):	MUNICIPAL SOLID WASTE PROCESSING REGISTRATION		100019
	MUNICIPAL SOLID WASTE PROCESSING PERMIT		047228
Location:	12188 COUNTY ROAD 1114, TYLER, TX, 75709	Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 05 - TYLER		
Date Compliance History Prepared:	September 17, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 17, 2002 to September 17, 2007		

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

Name: Cynthia McKaughan Phone: (512) 239-0735

### 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?   | N/A        |
| 4. If Yes, who was/were the prior owner(s)?  | <u>N/A</u> |
| 5. When did the change(s) in ownership occur?  | <u>N/A</u> |

### 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. (CEEDS Inv. Track. No.)  
N/A 1 08/24/2007 (572573)
  - E. Written notices of violations (NOV). (CEEDS Inv. Track. No.)
  - 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

SMITH COUNTY RECYCLING,  
L.L.C. DBA DINGLER ROAD  
RECYCLING CENTER,  
RN104443767

§  
§  
§  
§  
§  
§  
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2007-1518-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 Smith County Recycling, L.L.C. dba Dingler Road Recycling Center ("Smith County Recycling") 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 Smith County Recycling, represented by Newell Jarvis of the Jarvis Law Firm, appear before the Commission and together stipulate that:

1. Smith County Recycling owns and operates a wood recycling facility located at 12188 County Road 1114, in Tyler, Smith 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 Smith County Recycling agree that the Commission has jurisdiction to enter this Agreed Order, and that Smith County Recycling is subject to the Commission's jurisdiction.
4. Smith County Recycling received notice of the violations alleged in Section II ("Allegations") on or about August 29, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Smith County Recycling of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of fifteen thousand three hundred seventy one dollars (\$15,371.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Smith County Recycling has paid fifteen thousand three hundred seventy one dollars (\$15,371.00) 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 Smith County Recycling have 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 Smith County Recycling submitted documentation demonstrating acceptable financial assurance for the closure of the Facility on October 18, 2008.
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 Smith County Recycling 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

Smith County Recycling is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 328.5(b)(4), by failing to provide updates or changes to information contained in the facility report within 90 days of the effective date of the change, as documented during an investigation conducted on July 16, 2007. Specifically, the Respondent's Notice of Intent to Operate a Recycling Facility states that for clean timber and brush, the average monthly acceptance rate is 15 tons and the maximum storage amount is

120 tons. However, from January 2005 through June 2005, the average monthly acceptance rate was 2,436.5 cubic yards (717 tons) and the storage rate was over 14,619 cubic yards (4,300 tons). At the time of the investigation, Smith County Recycling was storing approximately 76,068 cubic yards (12,678 tons) of combustible waste material. Also, the Respondent has 100,000 cubic yards of broken concrete stockpiled on site, but has failed to notify as a recycler of concrete and asphalt scrap.

2. 30 TEX. ADMIN. CODE § 328.4(b)(3), by failing to recycle or transfer to a different site for recycling during each subsequent six-month period at least 50% by weight or volume of the material accumulated at the beginning of the period, as documented during an investigation conducted on July 16, 2007. Specifically, beginning August 2005, Smith County Recycling had accumulated 23,969 cubic yards of wood based on records documenting the amount of wood received from October 2004 through July 2005. The Facility's records indicated that only 660 cubic yards had been removed by the end of January 2006, six months later.
3. 30 TEX. ADMIN. CODE § 328.5(h), by failing to have a fire prevention and suppression plan, as documented during an investigation conducted on July 16, 2007.
4. 30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d), by failing to establish and maintain financial assurance for closure of a recycling facility that stores combustible material outdoors, as documented during an investigation conducted on July 16, 2007.

### III. DENIALS

Smith County Recycling generally denies each allegation in Section II ("Allegations").

### IV. ORDER

1. It is, therefore, ordered by the TCEQ that Smith County Recycling pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Smith County Recycling'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: Smith County Recycling, L.L.C. dba Dingler Road Recycling Center, Docket No. 2007-1518-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. Smith County Recycling shall undertake the following technical requirements:
  - a. Within 15 days after the effective date of this Agreed Order, update information contained in the facility report, in accordance with 30 TEX. ADMIN. CODE § 328.5(b)(4);
  - b. Within 30 days after the effective date of this Agreed Order:
    - i. Develop and implement a fire prevention and suppression plan that shall be made available to the local fire prevention authority with jurisdiction over the facility for review and coordination, in accordance with 30 TEX. ADMIN. CODE § 328.5(h);
    - ii. Submit documentation demonstrating that at least 50% by weight or volume of the material accumulated at the Facility for recycling during the 6-month period preceding the effective date of this order was recycled or transferred to a different site for recycling, in accordance with 30 TEX. ADMIN. CODE §§ 328.4(b)(3) and 328.5(f)(1); or
    - iii. In lieu of 2.a. through 2.b.ii., cease accepting waste and recyclable materials and remove all accumulated materials and dispose of them at an authorized facility.
  - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. 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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of

fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section, Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3756

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

Smith County Recycling, L.L.C. dba Dingler Road Recycling Center  
DOCKET NO. 2007-1518-MSW-E  
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

*Bryson Perdue*

For the Executive Director

12/18/08

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 Smith County Recycling, L.L.C.'s 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 Smith County Recycling, L.L.C.;
- 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 Smith County Recycling, L.L.C.;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Smith County Recycling, L.L.C.; and
- TCEQ seeking other relief as authorized by law.

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

*Ben Jarvis*  
Signature

10/30/08  
Date

BEN E JARVIS  
Name (Printed or typed)  
Authorized representative of  
Smith County Recycling, L.L.C. dba  
Dingler Road Recycling Center

MAA  
Title