

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2008-1368-MLM-E TCEQ ID: RN105211361 CASE NO.: 36413**

**RESPONDENT NAME: LARRY CATHEY DBA WACO WOOD RECYCLING AND MATERIALS**

<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 checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" 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> 268 Antler Road, Waco, McLennan County</p> <p><b>TYPE OF OPERATION:</b> Composting facility</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 location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired June 22, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629                  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492  <b>TCEQ Regional Contact:</b> Mr. Frank Burlison, Waco Regional Office, MC R-9, (254) 761-3007  <b>Respondent:</b> Mr. Larry Cathey, Owner, Waco Wood Recycling and Materials, 130 Doshier Lane, Woodway, Texas 76712                  Mr. Larry Cathey, Owner, Waco Wood Recycling and Materials, 7315 Highway 6, Waco, Texas 76712  <b>Respondent's Attorney:</b> Mr. John Montez, Montez &amp; Williams, P.C., 3809 W. Waco Drive, Waco, Texas 76710</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <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 of Investigation Relating to this Case:</b> June 9, 2008</p> <p><b>Date of NOE Relating to this Case:</b> July 14, 2008</p> <p><b>Background Facts:</b> The case was referred to the Litigation Division on September 8, 2008. The Respondent signed the Agreed Order on January 8, 2009.</p> <p><b>Current Compliance Status:</b> Not yet in compliance.</p> <p><b>MLM:</b></p> <p>1. Failed to obtain a permit for wastewater generated from a livestock manure composting operation [TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE § 332.4(l)].</p> <p>2. Failed to prevent the unauthorized disposal of municipal solid waste [30 TEX. ADMIN. CODE § 330.15(a)].</p>	<p><b>Total Assessed:</b> \$4,280</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> To be determined by the United States Bankruptcy Court.</p> <p>The penalty will be paid in accordance with the plan of reorganization approved by the United States Bankruptcy Court's Order issued on October 16, 2008.</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 Respondent shall undertake the following technical requirements:</p> <p>1. Within 30 days:</p> <p>a. Submit a Notice of Intent and the \$100.00 application fee for the manure composting operation; and</p> <p>b. Remove and properly dispose of all municipal solid waste disposed at the Facility.</p> <p>2. Within 45 days, submit written certification demonstrating compliance.</p>



# Penalty Calculation Worksheet (PCW)

DATES	Assigned	6-Aug-2008	Screening	7-Aug-2008	EPA Due	
	PCW	20-Jul-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Larry Cathey dba Waco Wood Recycling and Materials
Reg. Ent. Ref. No.	RN105211361
Facility/Site Region	9-Waco
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36413	No. of Violations	2
Docket No.	2008-1368-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media	Municipal Solid Waste	Enf. Coordinator	Michael Meyer
		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>\$4,000</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	7.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$280</b>
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Notes: Enhancement for one NOV with same or similar violations and one NOV with dissimilar violations during the previous five years.

Culpability	No	0.0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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Economic Benefit	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts: \$162  
 Approx. Cost of Compliance: \$4,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$4,280</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

<b>Final Penalty Amount</b>	<b>\$4,280</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$4,280</b>
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	<b>\$0</b>
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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>\$4,280</b>
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Screening Date 7-Aug-2008

Docket No. 2008-1368-MLM-E

PCW

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Policy Revision 2 (September 2002)

Case ID No. 36413

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105211361

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

### 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)	1	5%
	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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

>> 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

Enhancement for one NOV with same or similar violations and one NOV with dissimilar violations during the previous five years.

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

<b>Screening Date</b> 7-Aug-2008	<b>Docket No.</b> 2008-1368-MLM-E	<b>PCW</b>			
<b>Respondent</b> Larry Cathey dba Waco Wood Recycling and Materials	<i>Policy Revision 2 (September 2002)</i>				
<b>Case ID No.</b> 36413	<i>PCW Revision June 12, 2008</i>				
<b>Reg. Ent. Reference No.</b> RN105211361					
<b>Media [Statute]</b> Water Quality					
<b>Enf. Coordinator</b> Michael Meyer					
<b>Violation Number</b> <input type="text" value="1"/>					
<b>Rule Cite(s)</b>	<input type="text" value="Tex. Water Code § 26.121(a) and 30 Tex. Admin. Code § 332.4(1)"/>				
<b>Violation Description</b>	<input type="text" value="Failed to obtain a permit for wastewater generated from a livestock manure composting operation. Specifically, the investigators documented that not all wastewater runoff from the composting piles was being directed to the retention basin. In addition, there was no pump present at the retention pond to recirculate the wastewater back onto the composting piles."/>				
<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>				
	Release	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"/>	x	<input type="text"/>	<input type="text"/>
		<b>Percent</b>			<input type="text" value="10%"/>
<b>Matrix Notes</b>	<input type="text" value="100 percent 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="2"/>	<b>Number of violation days</b>		
		<input type="text" value="59"/>			
<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"/>			
		<b>Violation Base Penalty</b>		<input type="text" value="\$2,000"/>	
<input type="text" value="Two monthly events are recommended from the June 9, 2008 investigation to the August 7, 2008 screening date."/>					
<b>Good Faith Efforts to Comply</b>		<b>0.0% Reduction</b>		<b>\$0</b>	
		Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	<input type="text"/>	<input type="text"/>			
N/A	x	(mark with x)			
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>				
<b>Violation Subtotal</b>				<input type="text" value="\$2,000"/>	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>			
<b>Estimated EB Amount</b>		<input type="text" value="\$81"/>	<b>Violation Final Penalty Total</b>		
			<input type="text" value="\$2,140"/>		
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				<input type="text" value="\$2,140"/>	

### Economic Benefit Worksheet

**Respondent:** Larry Cathey dba Waco Wood Recycling and Materials

**Case ID No.:** 36413

**Reg. Ent. Reference No.:** RN105211361

**Media:** Water Quality

**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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**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,000	9-Jun-2008	31-Mar-2009	0.81	\$81	n/a	\$81
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit an application for a general permit. The Date Required is the June 9, 2008 investigation 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$81

<b>Screening Date</b> 7-Aug-2008	<b>Docket No.</b> 2008-1368-MLM-E	<b>PCW</b>		
<b>Respondent</b> Larry Cathey dba Waco Wood Recycling and Materials	<small>Policy Revision 2 (September 2002)</small>			
<b>Case ID No.</b> 36413	<small>PCW Revision June 12, 2008</small>			
<b>Reg. Ent. Reference No.</b> RN105211361				
<b>Media [Statute]</b> Water Quality				
<b>Enf. Coordinator</b> Michael Meyer				
<b>Violation Number</b> <input type="text" value="2"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 330.15(a)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to prevent the unauthorized disposal of municipal solid waste, as documented during an investigation conducted on June 9, 2008. Specifically, the investigators documented approximately 60 to 70 cubic yards of construction debris along with the remains of three animal carcasses which had been disposed at the site."/>			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	x
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>
<b>&gt;&gt; Programmatic Matrix</b>				
Falsification				
Major			Moderate	Minor
<input type="text"/>			<input type="text"/>	<input type="text"/>
			<b>Percent</b> <input type="text" value="0%"/>	
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health and environmental receptors."/>			
<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="2"/>		<input type="text" value="59"/> <b>Number of violation days</b>		
<small>mark only one with an x</small>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$2,000"/>	
	monthly	x		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
<input type="text" value="Two monthly events are recommended from the June 9, 2008 investigation to the August 7, 2008 screening date."/>				
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/> <b>Reduction</b>	<input type="text" value="\$0"/>	
		<small>Before NOV    NOV to EDRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	x	<small>(mark with x)</small>		
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
<b>Violation Subtotal</b>		<input type="text" value="\$2,000"/>		
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b> <input type="text" value="\$81"/>		<b>Violation Final Penalty Total</b> <input type="text" value="\$2,140"/>		
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$2,140"/>		

## Economic Benefit Worksheet

**Respondent:** Larry Cathey dba Waco Wood Recycling and Materials

**Case ID No.:** 36413

**Reg. Ent. Reference No.:** RN105211361

**Media:** Water Quality

**Violation No.:** 2

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$2,000	9-Jun-2008	31-Mar-2009	0.81	\$81	n/a	\$81
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and dispose of approximately 70 cubic yards of construction debris and to properly dispose of three animal carcasses. The date required is the June 9, 2008 investigation 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$81

## Compliance History Report

Customer/Respondent/Owner-Operator:	CN602950636    CATHEY, LARRY	Classification: AVERAGE	Rating: 1.37
Regulated Entity:	RN105211361    WACO WOOD RECYCLING AND MATERIALS	Classification: AVERAGE	Site Rating: 1.25
ID Number(s):	_____		
Location:	268 ANTLER RD, WACO, TX, 76712		
TCEQ Region:	REGION 09 - WACO		
Date Compliance History Prepared:	January 02, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 03, 2004 to September 02, 2008		

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

Name: Michael Meyer Phone: 239 - 4492

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? \_\_\_\_\_
5. When did the change(s) in ownership occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

### 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	11/09/2006	(513014)
2	10/09/2007	(570254)
3	10/09/2007	(570256)
4	10/09/2007	(573565)
5	11/06/2007	(598426)
6	03/19/2008	(637897)
7	07/11/2008	(682838)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/28/2006 (450214)

Self Report? NO

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 332, SubChapter A 332.4(1)

Description: Failure to obtain a permit for wastewater generated from a livestock manure compost operation.

Date: 10/05/2007 (570256)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 327 327.5(c)

Description: Failure to submit a written report of the spill to the Waco Regional Office within 30 working days of the incident.

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  
LARRY CATHEY DBA WACO  
WOOD RECYCLING AND  
MATERIALS,  
RN105211361

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2008-1368-MLM-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Larry Cathey dba Waco Wood Recycling and Materials ("Mr. Cathey") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Cathey, represented by John Montez of the law firm of Montez & Williams, P.C., appear before the Commission and together stipulate that:

1. Mr. Cathey owns a composting facility located at 268 Antler Road, Waco, McLennan 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. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 361, and TCEQ rules.
3. The Commission and Mr. Cathey agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Cathey is subject to the Commission's jurisdiction.
4. Mr. Cathey received notice of the violations alleged in Section II ("Allegations") on or about July 19, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Cathey of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of four thousand two hundred eighty dollars (\$4,280.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). On or about November 6, 2007, Mr. Cathey filed a petition for bankruptcy relief pursuant to Chapter 11 of the United States Code. The Automatic Stay imposed by the Bankruptcy Code (specifically, 11 USC § 362(a)) does not apply to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, by virtue of the exception set out at 11 USC § 362(b)(4). Accordingly, TCEQ (a governmental unit as defined under 11 USC § 101(27)) is expressly excepted from the automatic stay in pursuing enforcement of the State's environmental protection laws, and in seeking to liquidate its damages for such violations. So long as the Debtor's bankruptcy proceedings are pending and/or until relief from the automatic stay is granted, the TCEQ will, however, not seek to execute upon any monetary judgment obtained without first approaching the United States Bankruptcy Court where the Debtor's bankruptcy case is pending as necessary, after consultation with the Office of the Attorney General.
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. Cathey 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. Cathey 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. Cathey is alleged to have violated:

1. TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE § 332.4(1) by failing to obtain a permit for wastewater generated from a livestock manure composting operation. Specifically, the investigators documented that not all wastewater runoff from the composting piles was being directed to the retention basin. In addition, there

was no pump present at the retention pond to recirculate the wastewater back onto the composting piles as documented on June 9, 2008.

2. 30 TEX. ADMIN. CODE § 330.15(a) by failing to prevent the unauthorized disposal of municipal solid waste, as documented during an investigation conducted on June 9, 2008. Specifically, the investigators documented approximately 60 to 70 cubic yards of construction debris along with the remains of three animal carcasses which had been disposed at the Facility.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Cathey be assessed an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and Mr. Cathey'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 may be made payable to "Texas Commission on Environmental Quality" and sent with the notation "Re: Larry Cathey dba Waco Wood Recycling and Materials, Docket No. 2008-1368-MLM-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. Cathey shall undertake the following technical requirements:
  - a. Within 30 days upon the effective date of this Agreed Order, Mr. Cathey shall submit a Notice of Intent and \$100.00 application fee for the manure composting operation to:

Texas Commission on Environmental Quality  
Storm Water & General Permit Team, MC 228  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Agreed Order, Mr. Cathey shall remove and properly dispose of all municipal solid waste disposed at the Facility.
- c. Within 45 days after the effective date of this Agreed Order, Mr. Cathey shall submit written certification and detailed supporting documentation, including photographs, receipts, and 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.”

Mr. Cathey shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. to:

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

and

Frank Burluson, Waste Section Manager  
Texas Commission on Environmental Quality  
Waco Regional Office  
6801 Sanger Avenue, Suite 2500  
Waco, Texas 76710-7826

- 3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Cathey. Mr. Cathey 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. Cathey 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. Cathey's failure to comply is not a violation of this Agreed Order.

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

Larry Cathey dba Waco Wood Recycling and Materials  
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

01/09/2009 FRI

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For the Commission

For the Executive Director

6/17/2009

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 Mr. Cathey's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Cathey;
- 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 Mr. Cathey;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Cathey; and
- For the TCEQ seeking other relief as authorized by law.

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

Signature

1-8-09  
Date

Name (Printed or typed) Larry Cathey

Title Owner

Authorized representative of  
Larry Cathey dba Waco Wood  
Recycling and Materials

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