

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0727-MSW-E TCEQ ID: RN105211361 CASE NO.: 34819

RESPONDENT NAME: LARRY CATHEY DBA WACO WOOD RECYCLING AND MATERIALS

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 268 Antler Road, Waco, McLennan County</p> <p>TYPE OF OPERATION: Recycling facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired June 22, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p>TCEQ Attorney: Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p>TCEQ Enforcement Coordinator: Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492</p> <p>TCEQ Regional Contact: Mr. Frank Burleson, Waco Regional Office, MC R-9, (254) 761 -3007</p> <p>Respondent: 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</p> <p>Respondent's Attorney: Mr. John Montez, Montez & Williams, P.C., 3809 W. Waco Drive, Waco, Texas 76710</p>		

**RESPONDENT NAME: LARRY CATHEY DBA
WACO WOOD RECYCLING AND MATERIALS
DOCKET NO.: 2008-0727-MSW-E**

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 7, 2007</p> <p>Date of NOE Relating to this Case: June 24, 2008</p> <p>Background Facts: The EDRP was filed on June 11, 2008. The Respondent filed an answer and the case was referred to SOAH. The preliminary hearing was waived and discovery was exchanged. Settlement was achieved and the agreed order was signed on January 8, 2009.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>MSW:</p> <ol style="list-style-type: none"> Failed to maintain the minimum setback distance of 50 feet from all property lines to the edge of the area for storing processed material [30 TEX. ADMIN. CODE § 332.8(b)(1)]. Failed to have a fire prevention and suppression plan [30 TEX. ADMIN. CODE § 328.5(h)]. Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors [30 TEX. ADMIN. CODE §§ 37.921(a) and 328.5(d)]. Failed to provide documentation showing the recycling of or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six month period [30 TEX. ADMIN. CODE § 328.5(f)(1)]. Failed to submit a Notice of Intent to operate a Recycling Facility to the ED at least 90 days prior to engaging in recycling activities and to submit a form or forms describing the types of materials being accepted for recycling, any storage of materials prior to recycling, how the materials will be recycled and 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) and 330.11(e)]. 	<p>Total Assessed: \$38,216</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$0</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>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken: The Executive Director recognizes that the Respondent submitted a fire plan on May 9, 2007.</p> <p>Ordering Provisions: The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Option 1, within 30 days: <ol style="list-style-type: none"> Begin maintaining the minimum setback distance of 50 feet from all property lines to the edge of the area for storing processed material; Submit a Notice of Intent to operate a recycling facility; Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility; and Submit documentation demonstrating that at least 50% by weight or volume of the material accumulated at the Facility for recycling is recycled or transferred to a different site for recycling; or Option 2, in lieu of the above Ordering Provisions, within 30 days, remove all accumulated materials and dispose at an authorized facility. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

TCEQ

DATES	Assigned	20-Aug-2007			
	PCW	3-Jun-2008	Screening	15-Oct-2007	EPA Due

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

CASE INFORMATION				
Enf./Case ID No.	34819	No. of Violations	5	
Docket No.	2008-0727-MSW-E	Order Type	1660	
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Michael Meyer	
Multi-Media		EC's Team	Enforcement Team 7	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$16,000
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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	2% Enhancement	Subtotals 2, 3, & 7	\$320
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Notes: Enhancement for one NOV with dissimilar violations.

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

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

	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$14,642
 Approx. Cost of Compliance \$25,146
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	\$24,320
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OTHER FACTORS AS JUSTICE MAY REQUIRE	57%	Adjustment	\$13,896
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended adjustment to capture the avoided cost associated with the violations.

Final Penalty Amount	\$38,216
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$38,216
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DEFERRAL	0% Reduction	Adjustment	\$0
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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.

PAYABLE PENALTY	\$38,216
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Screening Date 15-Oct-2007

Docket No. 2008-0727-MSW-E

PCW

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Policy Revision 2 (September 2002)

Case ID No. 34819

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN105211361

Media [Statute] Municipal Solid Waste

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)	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%
<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) 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

Enhancement for one NOV with dissimilar violations.

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

Screening Date 15-Oct-2007

Docket No. 2008-0727-MSW-E

PCW

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Policy Revision 2 (September 2002)

Case ID No. 34819

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN105211361

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

Violation Number 1

Rule Cite(s) 30 Tex. Admin Code § 332.8(b)(1)

Violation Description Failed to maintain the minimum setback distance of 50 feet from all property lines to the edge of the area for storing processed material, as documented during an investigation on May 7, 2007. Specifically, the setback distance from the processed material to the south property line was about 32 feet and to the west property line was about 40 feet.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				10%
	Potential			x	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 161 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$27

Violation Final Penalty Total \$2,389

This violation Final Assessed Penalty (adjusted for limits) \$2,389

Economic Benefit Worksheet

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Case ID No. 34819

Reg. Ent. Reference No. RN105211361

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				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	7-May-2007	5-Jun-2008	1.1	\$27	n/a	\$27

Notes for DELAYED costs

Estimated cost to maintain the minimum setback distance of 50 feet from all property lines. Date required is the date of the investigation and final date is the date of 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

TOTAL

Screening Date 15-Oct-2007

Docket No. 2008-0727-MSW-E

PCW

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Policy Revision 2 (September 2002)

Case ID No. 34819

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN105211361

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

Violation Number 2

Rule Cite(s) 30 Tex. Admin Code § 328.5(h)

Violation Description Failed to have a fire prevention and suppression plan, as documented during an investigation on May 7, 2007. Specifically, the facility did not have a fire prevention and suppression plan.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				50%
	Potential	x			

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

Human health or the environment could be exposed to significant amounts of pollutants which would exceed levels that are protective of human health or environmental receptors.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1 161 Number of violation days

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$5,000

One monthly event is recommended from the May 7, 2007 investigation date to the date of compliance (May 9, 2007).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$11,943

This violation Final Assessed Penalty (adjusted for limits) \$11,943

Economic Benefit Worksheet

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Case ID No. 34819

Reg. Ent. Reference No. RN105211361

Media Municipal Solid Waste

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

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)	\$10,000	7-May-2007	9-May-2007	0.0	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to draft a site specific fire prevention plan and suppression plan. Date Required is the investigation date and Final Date is the 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 \$10,000

TOTAL \$3

Screening Date 15-Oct-2007 **Docket No.** 2008-0727-MSW-E **PCW**
Respondent Larry Cathey dba Waco Wood Recycling and Materials *Policy Revision 2 (September 2002)*
Case ID No. 34819 *PCW Revision September 19, 2007*
Reg. Ent. Reference No. RN105211361
Media [Statute] Municipal Solid Waste
Enf. Coordinator Michael Meyer

Violation Number
Rule Cite(s)
Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events 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 type="text" value="x"/>

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Case ID No. 34819

Reg. Ent. Reference No. RN105211361

Media Municipal Solid Waste

Violation No. 3

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]	\$13,896	7-May-2006	7-May-2007	1.0	\$695	\$13,896	\$14,591
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 establish and maintain financial assurance for the waste at the facility. Date Required is a year prior to the investigation and Final Date is the investigation date.

Approx. Cost of Compliance	\$13,896	TOTAL	\$14,591
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Screening Date 15-Oct-2007

Docket No. 2008-0727-MSW-E

PCW

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Policy Revision 2 (September 2002)

Case ID No. 34819

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN105211361

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

Violation Number 4

Rule Cite(s) 30 Tex. Admin Code § 328.5(f)(1)

Violation Description Failed to provide documentation showing the recycling of or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six month period, as documented during an investigation conducted on May 7, 2007. Specifically, the Respondent failed provide documentation showing the recycling of 50% by weight or volume of the waste accepted at the facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential			0%	

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		x			
	100% of the rule requirement was not met.				

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 161 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$2,500

One single event is recommended

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$5,971

This violation Final Assessed Penalty (adjusted for limits) \$5,971

Economic Benefit Worksheet

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Case ID No. 34819

Reg. Ent. Reference No. RN105211361

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
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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	\$500	7-May-2007	5-Jun-2007	0.1	\$2	n/a	\$2
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain records showing the percentage of materials recycled from the investigation date to 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 \$500

TOTAL \$2

Screening Date 15-Oct-2007 **Docket No.** 2008-0727-MSW-E **PCW**
Respondent Larry Cathey dba Waco Wood Recycling and Materials *Policy Revision 2 (September 2002)*
Case ID No. 34819 *PCW Revision September 19, 2007*
Reg. Ent. Reference No. RN105211361
Media [Statute] Municipal Solid Waste
Enf. Coordinator Michael Meyer

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="text" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Case ID No. 34819

Reg. Ent. Reference No. RN105211361

Media Municipal Solid Waste

Violation No. 5

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)	\$250	7-May-2007	1-Dec-2008	1.6	\$20	n/a	\$20

Notes for DELAYED costs

Estimated cost to prepare and submit a Notice of Intent to operate a recycling operation. The Date Required is the May 7, 2007 investigation and the Final Date is the estimated compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/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 \$250

TOTAL \$20

Compliance History

Customer/Respondent/Owner-Operator:	CN602950636	CATHEY, LARRY	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN105211361	WACO WOOD RECYCLING AND MATERIALS	Classification:	Site Rating:
ID Number(s):				
Location:	268 ANTLER RD, WACO, TX, 76712			
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	April 30, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 01, 2003 to April 30, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Michael Meyer	Phone:	(512) 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)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

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 | 10/09/2007 | (570256) |
| 2 | 10/09/2007 | (570254) |
| 3 | 10/09/2007 | (573565) |
| 4 | 11/06/2007 | (598426) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|----------|-----------------------|
| 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
- 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. 2008-0727-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 Larry Cathey dba Waco Wood Recycling and Materials ("Mr. Cathey") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. 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 recycling 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. 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 June 29, 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 thirty-eight thousand two hundred sixteen dollars (\$38,216.00) 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. On May 2, 2008, the Commission filed a Proof of Claim for penalties in Mr. Cathey's bankruptcy proceedings (Proof of Claim number 98-1). The Commission amended its claim on July 23, 2008 to reflect the penalty of \$38,216 (Proof of Claim number 98-2). The penalty will be paid in accordance with the plan of reorganization which was approved by the United States Bankruptcy Court's Order issued on October 16, 2008. The TCEQ will not seek payment of the penalty from Mr. Cathey in a manner inconsistent with the United States Bankruptcy Court's Order issued on October 16, 2008.
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 recognizes that Mr. Cathey submitted a fire plan on May 9, 2007.
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 Mr. Cathey 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

Mr. Cathey is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 332.8(b)(1) by failing to maintain the minimum setback distance of 50 feet from all property lines to the edge of the area for storing processed material. Specifically, the setback distance from the processed material to the south property line was about 32 feet and to the west property line was about 40 feet as documented on May 7, 2007.
2. 30 TEX. ADMIN. CODE § 328.5(h) by failing to have a fire prevention and suppression plan.
3. 30 TEX. ADMIN. CODE §§ 37.921(a) and 328.5(d) by failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors as documented on May 7, 2007.
4. 30 TEX. ADMIN. CODE § 328.5(f)(1) by failing to provide documentation showing the recycling of or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six month period as documented on May 7, 2007.
5. 30 TEX. ADMIN. CODE §§ 328.5(b) and 330.11(e) by failing to submit a Notice of Intent to operate a Recycling Facility to the Executive Director at least 90 days prior to engaging in recycling activities and to submit a form or forms describing the types of materials being accepted for recycling, any storage of materials prior to recycling, how the materials will be recycled and updates or changes to information contained in the facility report within 90 days of the effective date of the change as documented on May 7, 2007.

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. 2008-0727-MSW-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Cathey shall undertake the following technical requirements:

a. Option 1: Within 30 days after the effective date of this Agreed Order, Mr. Cathey shall:

- i. Begin maintaining the minimum setback distance of 50 feet from all property lines to the edge of the area for storing processed material, in accordance with 30 TEX. ADMIN. CODE § 332.8(b)(1);
- ii. Submit a notice of intent to operate a recycling facility, in accordance with 30 TEX. ADMIN. CODE § 328.5(b);
- iii. Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility in accordance with 30 TEX. ADMIN. CODE §§ 328.5(d) and 37.921 to:

Financial Assurance Team, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

- iv. Submit documentation demonstrating that at least 50% by weight or volume of the material accumulated at the Facility for recycling is recycled or transferred to a different site for recycling, in accordance with 30 TEX. ADMIN. CODE § 328.5(f)(1);

or

- b. Option 2: In lieu of Ordering Provisions 2.a.i. through 2.a.iv., within 30 days after the effective date of this Agreed Order, Mr. Cathey shall remove all accumulated materials and dispose at an authorized facility.

- c. Within 45 days after the effective date of this Agreed Order, Mr. Cathey shall 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.i. through 2.a.iv. or 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification shall be submitted to:

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

and

Frank Burlison, Waste Section Manager
Texas Commission on Environmental Quality
Waco Regional Office
6801 Sanger Ave., Ste. 2500
Waco, Texas 76710-7826

and

Municipal Solid Waste Permits Section, MC 124
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

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
Docket No. 2008-0727-MSW-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

01/09/2009 FRI

01/014

For the Commission

[Handwritten Signature]

6/17/2009

For the Executive Director

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
- TCEQ seeking other relief as authorized by law.

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

Signature

Signature

Signature

Larry Cathey

Name (Printed or typed)

Authorized representative of

Larry Cathey dba Waco Wood
Recycling and Materials

For the

6-8-09

Date

Owner

Title

01/09/2009 FRI

01/014

01/09/2009 FRI

01/014