

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0432-MLM-E **TCEQ ID:** RN101873164 **CASE NO.:** 37384

RESPONDENT NAME: Advanced Environmental Recycling Technologies, Inc.

| | | |
|--|--|--|
| 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 checked="" type="checkbox"/> MULTI-MEDIA (check all that apply) | <input checked="" 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 type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input checked="" type="checkbox"/> USED OIL |
| <p>SITE WHERE VIOLATION(S) OCCURRED: Advanced Environmental Recycling Technologies, 8432 East Ranch Road 2169, near Junction, Kimble County</p> <p>TYPE OF OPERATION: Reconstituted wood products manufacturing facility</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" 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 has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on September 14, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Michael Meyer, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-4492; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Alford Drinkwater, Senior Vice President, Advanced Environmental Recycling Technologies, Inc., 8432 East Ranch Road 2169, Junction, Texas 76849 Respondent's Attorney: Not represented by counsel on this enforcement matter</p> | | |

| 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(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: January 29, 2009</p> <p>Date of NOV/NOE Relating to this Case: March 16, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to prevent the unauthorized discharge of industrial solid waste. Specifically, the investigator documented stained soils adjacent to the fueling area. Sample analysis indicated elevated levels of total petroleum hydrocarbons [30 TEX. ADMIN. CODE § 335.4].</p> <p>2) Failure to provide notice of the intent to conduct the recycling of industrial solid waste or municipal hazardous waste. Specifically, the Respondent failed to provide notice of recycling activities within 90 days prior to engaging in such activities [30 TEX. ADMIN. CODE § 335.6(h)].</p> <p>3) Failure to maintain records of all hazardous and industrial solid waste activities. Specifically, the Respondent was not able to provide waste generation records at the request of the regional investigator [30 TEX. ADMIN. CODE § 335.9(a)(1)].</p> <p>4) Failure to have financial assurance for closure of a recycling facility storing nonhazardous combustible recycling materials outdoors. Specifically, the Respondent failed to provide the investigator with proof of financial assurance for the approximately 616 cubic yards of wood and wood-polyethylene composite fiber in the East pile and 4,670</p> | <p>Total Assessed: \$9,282</p> <p>Total Deferred: \$1,856 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$7,426</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. On January 29, 2009 marked the two previously unmarked containers storing used oil with the words "Used Oil"; and</p> <p>b. In a letter to the TCEQ dated February 12, 2009, provided documentation that the Respondent has developed and implemented procedures to ensure records of all solid waste activities are kept on-site along with a notice of intent to conduct waste recycling activities performed at the Facility.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days of the effective date of this Agreed Order, submit documentation demonstrating an acceptable financial assurance mechanism for closure of the stored combustible recyclable materials;</p> <p>b. Within 60 days after the effective date of this Agreed Order, collect representative soil or other appropriate media samples to evaluate the impact of the release and prepare an environmental site assessment to determine whether the release is subject to the Texas Risk Reduction Program ("TRRP") rules. The environmental site assessment, including remediation plans or justification for no further action, as applicable, shall be submitted for review and approval. If the release is subject to TRRP, comply with all applicable requirements of the TRRP found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(l)); and Institutional Controls under Subchapter F and respond completely and adequately, as determined by the TCEQ, to all letter requests for information within 30 days after the date of such letters, or by any</p> |

| | | |
|--|--|--|
| <p>cubic yards of composite wood and recyclable wood fines stored in the North pile at the Facility [30 TEX. ADMIN. CODE §§ 335.24(k) and 37.921].</p> <p>5) Failure to mark or clearly label containers used to store used oil with the words "Used Oil". Specifically, the investigator documented two used oil containers which were not labeled [30 TEX. ADMIN. CODE § 324.1 and 40 CODE OF FEDERAL REGULATIONS § 279.22(c)(1)].</p> | | <p>other deadline specified in writing; and</p> <p>c. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a and b.</p> |
|--|--|--|

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

| | | | | |
|-------------|--------------|-----------------------------|------------------------------|----------------|
| ICEQ | DATES | Assigned 23-Mar-2009 | Screening 30-Mar-2009 | EPA Due |
| | PCW | 1-Apr-2009 | | |

| | |
|--|---|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Advanced Environmental Recycling Technologies, Inc. |
| Reg. Ent. Ref. No. | RN101873164 |
| Facility/Site Region | 8-San Angelo |
| Major/Minor Source | Minor |

| | | | |
|--|--------------------------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 37384 | No. of Violations | 4 |
| Docket No. | 2009-0432-MLM-E | Order Type | 1660 |
| Media Program(s) | Industrial and Hazardous Waste | Government/Non-Profit | No |
| Multi-Media | Used Oil | Enf. Coordinator | Michael Meyer |
| | | 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* **\$8,000**

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 *Subtotals 2, 3, & 7* **\$560**

Notes There was one NOV for same or similar violations and one NOV for dissimilar violations during the previous five years.

Culpability No 0.0% Enhancement *Subtotal 4* **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments *Subtotal 5* **\$500**

Economic Benefit 0.0% Enhancement* *Subtotal 6* **\$0**

Total EB Amounts **\$1,288**
 Approx. Cost of Compliance **\$11,388**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 *Final Subtotal* **\$8,060**

OTHER FACTORS AS JUSTICE MAY REQUIRE 10.3% *Adjustment* **\$827**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommend adjustment to capture the avoided cost associated with Violation No. 4.

Final Penalty Amount **\$8,887**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **\$8,887**

DEFERRAL 20.0% Reduction *Adjustment* **-\$1,777**

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

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY **\$7,110**

| | | | | |
|--------------------------------|---|-------------------|-----------------|---|
| Screening Date | 30-Mar-2009 | Docket No. | 2009-0432-MLM-E | PCW |
| Respondent | Advanced Environmental Recycling Technologies, Inc. | | | <i>Policy Revision 2 (September 2002)</i> |
| Case ID No. | 37384 | | | <i>PCW Revision October 30, 2008</i> |
| Reg. Ent. Reference No. | RN101873164 | | | |
| Media [Statute] | Industrial and Hazardous 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) | 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)

>> **Repeat Violator (Subtotal 3)**

Adjustment Percentage (Subtotal 3)

>> **Compliance History Person Classification (Subtotal 7)**

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

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

| | | | |
|--|--|--|--|
| Screening Date 30-Mar-2009 | Docket No. 2009-0432-MLM-E | PCW | |
| Respondent Advanced Environmental Recycling Technologies, Inc. | | <i>Policy Revision 2 (September 2002)</i> | |
| Case ID No. 37384 | | <i>PCW Revision October 30, 2008</i> | |
| Reg. Ent. Reference No. RN101873164 | | | |
| Media [Statute] Industrial and Hazardous Waste | | | |
| Enf. Coordinator Michael Meyer | | | |
| Violation Number | 1 | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 335.4 | | |
| Violation Description: | Failed to prevent the unauthorized discharge of industrial solid waste, as documented during an investigation conducted on January 29, 2009. Specifically, the investigator documented stained soils adjacent to the fuelling area. Sample analysis indicated elevated levels of total petroleum hydrocarbons. | | |
| Base Penalty | | \$10,000 | |
| >> Environmental, Property and Human Health Matrix | | | |
| OR | Release | Harm | |
| | | Major Moderate Minor | |
| | Actual | <input type="checkbox"/> Major <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Minor | Percent <input type="text" value="25%"/> |
| | Potential | <input type="checkbox"/> Major <input type="checkbox"/> Moderate <input type="checkbox"/> Minor | |
| >> Programmatic Matrix | | | |
| | Falsification | Major Moderate Minor | Percent <input type="text" value="0%"/> |
| | <input type="checkbox"/> | <input type="checkbox"/> Major <input type="checkbox"/> Moderate <input type="checkbox"/> Minor | |
| Matrix Notes | Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels protective of human health or environmental receptors. | | |
| Adjustment | | \$7,500 | |
| | | \$2,500 | |
| Violation Events | | | |
| | Number of Violation Events | <input type="text" value="2"/> | Number of violation days |
| | | <input type="text" value="60"/> | |
| <i>mark only one with an x</i> | daily | <input type="checkbox"/> | Violation Base Penalty <input type="text" value="\$5,000"/> |
| | weekly | <input type="checkbox"/> | |
| | monthly | <input checked="" type="checkbox"/> | |
| | quarterly | <input type="checkbox"/> | |
| | semiannual | <input type="checkbox"/> | |
| | annual | <input type="checkbox"/> | |
| | single event | <input type="checkbox"/> | |
| Two monthly events are recommended from the January 29, 2009 investigation to the March 30, 2009 screening date. | | | |
| Good Faith Efforts to Comply | | 0.0% Reduction | \$0 |
| | | Before NOV NOV to EDRP/Settlement Offer | |
| Extraordinary | <input type="checkbox"/> | <input type="checkbox"/> | Violation Subtotal <input type="text" value="\$5,000"/> |
| Ordinary | <input type="checkbox"/> | <input type="checkbox"/> | |
| N/A | <input checked="" type="checkbox"/> | (mark with x) | |
| Notes | The Respondent does not meet the good faith criteria for this violation. | | |
| Economic Benefit (EB) for this violation | | Statutory Limit Test | |
| Estimated EB Amount | <input type="text" value="\$460"/> | Violation Final Penalty Total | <input type="text" value="\$5,899"/> |
| | | This violation Final Assessed Penalty (adjusted for limits) | <input type="text" value="\$5,899"/> |

Economic Benefit Worksheet

Respondent: Advanced Environmental Recycling Technologies, Inc.
Case ID No.: 37384
Reg. Ent. Reference No.: RN101873184
Media: Industrial and Hazardous 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 |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|-----------|---------------|-------------|------|----------------|---------------|-----------|
| 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 | \$10,000 | 29-Jan-2009 | 31-Dec-2009 | 0.92 | \$460 | n/a | \$460 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs: Estimated cost to conduct an environmental assessment to determine the vertical and horizontal extent of contamination. The Date Required is the January 29, 2009 investigation and the Final Date is the projected date of compliance.

Avoided Costs

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

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|-------------------------------|-----------|---------------|------------|------|----------------|---------------|-----------|
| 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 | \$10,000 | TOTAL | \$460 |
|-----------------------------------|----------|--------------|-------|

| | | | | |
|---|---|---|---------------------------------|----------------------|
| Screening Date: 30-Mar-2009 | Docket No.: 2009-0432-MLM-E | PCW | | |
| Respondent: Advanced Environmental Recycling Technologies, Inc. | | <i>Policy Revision 2 (September 2002)</i> | | |
| Case ID No.: 37384 | | <i>PCW Revision October 30, 2008</i> | | |
| Reg. Ent. Reference No.: RN101873164 | | | | |
| Media [Statute]: Industrial and Hazardous Waste | | | | |
| Enf. Coordinator: Michael Meyer | | | | |
| Violation Number: | 2 | | | |
| Rule Cite(s): | 30 Tex. Admin. Code § 335.6(h) | | | |
| Violation Description: | Failed to provide notice of the intent to conduct the recycling of industrial solid waste or municipal hazardous waste, as documented during an investigation conducted on January 29, 2009. Specifically, the Respondent failed to provide notice of recycling activities within 90 days prior to engaging in such activities. | | | |
| Base Penalty: | | \$10,000 | | |
| >> Environmental, Property and Human Health Matrix | | | | |
| OR | Harm | | | |
| | Release | Major | Moderate | Minor |
| | Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | | Percent | 0% | |
| >> Programmatic Matrix | | | | |
| | Falsification | Major | Moderate | Minor |
| | <input type="text"/> | X | <input type="text"/> | <input type="text"/> |
| | | Percent | 10% | |
| Matrix Notes: | 100 percent of the rule requirement was not met. | | | |
| | | Adjustment: | \$9,000 | |
| | | | \$1,000 | |
| Violation Events | | | | |
| Number of Violation Events: | | 1 | | |
| | | 14 | Number of violation days | |
| <i>mark only one with an x</i> | daily | <input type="text"/> | | |
| | weekly | <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: | \$1,000 | |
| One monthly event is recommended from the January 29, 2009 investigation to the February 12, 2009 date of compliance. | | | | |
| Good Faith Efforts to Comply | | 25.0% Reduction | \$250 | |
| | Before NOV | NOV to EDRP/Settlement Offer | | |
| Extraordinary | <input type="text"/> | <input type="text"/> | | |
| Ordinary | X | <input type="text"/> | | |
| N/A | <input type="text"/> | (mark with x) | | |
| Notes: | The Respondent provided the notice to the TCEQ on February 12, 2009. | | | |
| | | Violation Subtotal: | \$750 | |
| Economic Benefit (EB) for this violation | | Statutory Limit Test | | |
| Estimated EB Amount: | \$0 | Violation Final Penalty Total: | \$904 | |
| | | This violation Final Assessed Penalty (adjusted for limits): | \$904 | |

Economic Benefit Worksheet

Respondent: Advanced Environmental Recycling Technologies, Inc.
Case ID No.: 37384
Reg. Ent. Reference No.: RN101873164
Media: Industrial and Hazardous 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

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|-----------|---------------|-------------|------|----------------|---------------|-----------|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | \$100 | 29-Jan-2009 | 12-Feb-2009 | 0.04 | \$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 | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs Estimated cost to provide a notice of intent to conduct waste recycling activities at the Facility. The Date Required is the January 29, 2009 investigation and the Final Date is the date of compliance.

Avoided Costs

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

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|-------------------------------|-----------|---------------|------------|------|----------------|---------------|-----------|
| 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 | \$100 | TOTAL | \$0 |
|----------------------------|-------|--------------|-----|

| | | | |
|---|---|---|--|
| Screening Date: 30-Mar-2009 | Docket No.: 2009-0432-MLM-E | PCW | |
| Respondent: Advanced Environmental Recycling Technologies, Inc. | | <i>Policy Revision 2 (September 2002)</i> | |
| Case ID No.: 37384 | | <i>PCW Revision October 30, 2008</i> | |
| Reg. Ent. Reference No.: RN101873164 | | | |
| Media [Statute]: Industrial and Hazardous Waste | | | |
| Enf. Coordinator: Michael Meyer | | | |
| Violation Number: | 3 | | |
| Rule Cite(s): | 30 Tex. Admin. Code § 335.9(a)(1) | | |
| Violation Description: | Failed to maintain records of all hazardous and industrial solid waste activities, as documented during an investigation conducted on January 29, 2009. Specifically, the Respondent was not able to provide waste generation records at the request of the investigator. | | |
| Base Penalty: | \$10,000 | | |
| >> Environmental, Property and Human Health Matrix | | | |
| OR | Harm | | |
| | Major | Moderate | Minor |
| Release Actual: | | | |
| Potential: | | | |
| Percent: | 0% | | |
| >> Programmatic Matrix | | | |
| | Major | Moderate | Minor |
| Falsification: | | | |
| Matrix Notes: | 100 percent of the rule requirement was not met. | | |
| Adjustment: | \$9,000 | | |
| \$1,000 | | | |
| Violation Events | | | |
| Number of Violation Events: | 1 | Number of violation days: | 14 |
| <i>mark only one with an x</i> | daily | | Violation Base Penalty: \$1,000 |
| | weekly | | |
| | monthly | x | |
| | quarterly | | |
| | semiannual | | |
| | annual | | |
| | single event | | |
| One monthly event is recommended from the January 29, 2009 investigation to the February 12, 2009 date of compliance. | | | |
| Good Faith Efforts to Comply | | | |
| 25.0% Reduction | | \$250 | |
| | Before NOV | NOV to EOPRP/Settlement Offer | |
| Extraordinary: | | | |
| Ordinary: | x | | |
| N/A: | | (mark with x) | |
| Notes: | The Respondent provided compliance documentation to the TCEQ on February 12, 2009. | | |
| Violation Subtotal: | \$750 | | |
| Economic Benefit (EB) for this violation | | | |
| Statutory Limit Test | | | |
| Estimated EB Amount: | \$0 | Violation Final Penalty Total: | \$904 |
| This violation Final Assessed Penalty (adjusted for limits): | | \$904 | |

Economic Benefit Worksheet

Respondent: Advanced Environmental Recycling Technologies, Inc.
Case ID No.: 37384
Reg. Ent. Reference No.: RN101873184
Media: Industrial and Hazardous 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 | | | | 0.00 | \$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 | \$500 | 29-Jan-2009 | 12-Feb-2009 | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs: Estimated cost to develop and implement a system to ensure that records of all industrial solid waste and hazardous waste activities are kept on-site. The Date Required is the January 29, 2009 investigation the the Final Date is the 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 | \$500 | TOTAL | \$0 |
|----------------------------|-------|--------------|-----|

| | | | | |
|--|---|---|---|--|
| Screening Date: 30-Mar-2009 | Docket No.: 2009-0432-MLM-E | PCW | | |
| Respondent: Advanced Environmental Recycling Technologies, Inc. | | <i>Policy Revision 2 (September 2002)</i> | | |
| Case ID No.: 37384 | | <i>PCW Revision October 30, 2008</i> | | |
| Reg. Ent. Reference No.: RN101873164 | | | | |
| Media [Statute]: Industrial and Hazardous Waste | | | | |
| Enf. Coordinator: Michael Meyer | | | | |
| Violation Number: | 4 | | | |
| Rule Cite(s): | 30 Tex. Admin. Code §§ 335.24(k) and 37.921 | | | |
| Violation Description: | Failed to have financial assurance for closure of a recycling facility storing nonhazardous combustible recycling materials outdoors, as documented during an investigation conducted on January 29, 2009. Specifically, the Respondent failed to provide the investigator with proof of financial assurance for the approximately 616 cubic yards of wood and wood-polyethylene composite fiber in the East pile and approximately 4,670 cubic yards of composite wood and recyclable wood fines stored in the North pile at the Facility. | | | |
| Base Penalty: | \$10,000 | | | |
| >> Environmental, Property and Human Health Matrix | | | | |
| OR | Harm | | | |
| | Release | Major | Moderate | Minor |
| | Actual | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Potential | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Percent: <input type="text" value="0%"/> |
| >> Programmatic Matrix | | | | |
| | Falsification | Major | Moderate | Minor |
| | <input type="checkbox"/> | x | <input type="checkbox"/> | <input type="checkbox"/> |
| Matrix Notes: | 100 percent of the rule requirement was not met. | | | Percent: <input type="text" value="10%"/> |
| Adjustment: | | | \$9,000 | |
| | | | \$1,000 | |
| Violation Events | | | | |
| Number of Violation Events: | <input type="text" value="1"/> | <input type="text" value="365"/> | Number of violation days | |
| <i>mark only one with an x</i> | daily | <input type="checkbox"/> | Violation Base Penalty: <input type="text" value="\$1,000"/> | |
| | weekly | <input type="checkbox"/> | | |
| | monthly | <input type="checkbox"/> | | |
| | quarterly | <input type="checkbox"/> | | |
| | semiannual | <input type="checkbox"/> | | |
| | annual | x | | |
| | single event | <input type="checkbox"/> | | |
| One annual event is recommended. | | | | |
| Good Faith Efforts to Comply | | 0.0% Reduction | \$0 | |
| | Before NOV | NOV to EDPRP/Settlement Offer | | |
| Extraordinary | <input type="checkbox"/> | <input type="checkbox"/> | | |
| Ordinary | <input type="checkbox"/> | <input type="checkbox"/> | | |
| N/A | x | (mark with x) | | |
| Notes: | The Respondent does not meet the good faith criteria for this violation. | | | |
| Violation Subtotal: | | | \$1,000 | |
| Economic Benefit (EB) for this violation | | Statutory Limit Test | | |
| Estimated EB Amount: | <input type="text" value="\$827"/> | Violation Final Penalty Total: | <input type="text" value="\$1,180"/> | |
| This violation Final Assessed Penalty (adjusted for limits): | | | <input type="text" value="\$1,180"/> | |

Economic Benefit Worksheet

Respondent: Advanced Environmental Recycling Technologies, Inc.

Case ID No.: 37384

Reg. Ent. Reference No.: RN101873184

Media: Industrial and Hazardous 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 | | | | 0.00 | \$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 | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Avoided Costs

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

| | | | | | | | |
|-------------------------------|-------|-------------|-------------|------|------|-------|-------|
| Disposal | | | | 0.00 | \$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] | \$788 | 29-Jan-2008 | 29-Jan-2009 | 1.00 | \$39 | \$788 | \$827 |
| ONE-TIME avoided costs [3] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Estimated cost to obtain and maintain financial assurance. The Date Required is one year prior to the investigation and the final date is the date of the investigation.

Approx. Cost of Compliance

\$788

TOTAL

\$827



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned | 23-Mar-2009 | Screening | 30-Mar-2009 | EPA Due | |
| | PCW | 1-Apr-2009 | | | | |

| | |
|--|---|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Advanced Environmental Recycling Technologies, Inc. |
| Reg. Ent. Ref. No. | RN101873164 |
| Facility/Site Region | 8-San Angelo |
| Major/Minor Source | Minor |

| | | | |
|--|--------------------------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 37384 | No. of Violations | 1 |
| Docket No. | 2009-0432-MLM-E | Order Type | 1660 |
| Media Program(s) | Used Oil | Government/Non-Profit | No |
| Multi-Media | Industrial and Hazardous Waste | Enf. Coordinator | Michael Meyer |
| | | EC's Team | Enforcement Team 7 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$2,500 |

Penalty Calculation Section

| | | |
|---|-------------------|-------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$500 |
|---|-------------------|-------|

| | |
|--|--|
| ADJUSTMENTS (+/-) TO SUBTOTAL 1 | |
| Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage. | |

| | | | |
|---------------------------|------------------|--------------------------------|------|
| Compliance History | 4.0% Enhancement | Subtotals 2, 3, & 7 | \$20 |
|---------------------------|------------------|--------------------------------|------|

Notes The Respondent had two NOVs for dissimilar violations during the previous five years.

| | | | | |
|--------------------|----|------------------|-------------------|-----|
| Culpability | No | 0.0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|------------------|-------------------|-----|

Notes The Respondent does not meet the culpability criteria.

| | | |
|--|-------------------|-------|
| Good Faith Effort to Comply Total Adjustments | Subtotal 5 | \$125 |
|--|-------------------|-------|

| | | | |
|----------------------------|------------------|-----------------------------------|-----|
| Economic Benefit | 0.0% Enhancement | Subtotal 6 | \$0 |
| Total EB Amounts | \$0 | *Capped at the Total EB \$ Amount | |
| Approx. Cost of Compliance | \$50 | | |

| | | |
|-----------------------------|-----------------------|-------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$395 |
|-----------------------------|-----------------------|-------|

| | | | |
|---|------|-------------------|-----|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 0.0% | Adjustment | \$0 |
| Reduces or enhances the Final Subtotal by the indicated percentage. | | | |

Notes

| | |
|-----------------------------|-------|
| Final Penalty Amount | \$395 |
|-----------------------------|-------|

| | | |
|-----------------------------------|-------------------------------|-------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$395 |
|-----------------------------------|-------------------------------|-------|

| | | | |
|---|-----------------|-------------------|-------|
| DEFERRAL | 20.0% Reduction | Adjustment | -\$79 |
| Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only, e.g. 20 for 20% reduction.) | | | |

Notes Deferral offered for expedited settlement.

| | |
|------------------------|-------|
| PAYABLE PENALTY | \$316 |
|------------------------|-------|

Screening Date 30-Mar-2009

Docket No. 2009-0432-MLM-E

PCW

Respondent Advanced Environmental Recycling Technologies, Inc.

Policy Revision 2 (September 2002)

Case ID No. 37384

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101873164

Media [Statute] Used Oil

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 | 2 | 4% |
| 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) 4%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

The Respondent had two NOVs for dissimilar violations during the previous five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 4%

| | | | | |
|--------------------------------|--|-------------------|-----------------|------------------------------------|
| Screening Date | 30-Mar-2009 | Docket No. | 2009-0432-MLM-E | PCW |
| Respondent | Advanced Environmental Recycling Technologies, Inc. | | | Policy Revision 2 (September 2002) |
| Case ID No. | 37384 | | | PCW Revision October 30, 2008 |
| Reg. Ent. Reference No. | RN101873164 | | | |
| Media [Statute] | Used Oil | | | |
| Enf. Coordinator | Michael Meyer | | | |
| Violation Number | 1 | | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 324.1 and 40 Code of Federal Regulations § 279.22(c)(1) | | | |
| Violation Description | Failed to mark or clearly label containers used to store used oil with the words "Used Oil" as documented during an investigation conducted on January 29, 2009. Specifically, the investigator documented two used oil containers which were not labeled. | | | |
| Base Penalty | \$2,500 | | | |

>> Environmental, Property and Human Health Matrix

| | | | | | |
|----|-----------|-------|----------|---------|-------|
| OR | Harm | | | Percent | |
| | Release | Major | Moderate | | Minor |
| | Actual | | | | |
| | Potential | | | | |
| | | | | 0% | |

>> Programmatic Matrix

| | | | | | |
|--|---------------|-------|----------|-------|---------|
| | Falsification | Major | Moderate | Minor | Percent |
| | | X | | | 10% |

Matrix Notes: 100 percent of the rule requirement was not met.

Adjustment: \$2,250

\$250

Violation Events

Number of Violation Events: 2 Number of violation days: 2

mark only one with an x

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | X |

Violation Base Penalty: \$500

Two single events (one event for each container) are recommended.

Good Faith Efforts to Comply 25.0% Reduction \$125

| | | |
|---------------|------------|-------------------------------|
| | Before NOV | NOV to EOPRP/Settlement Offer |
| Extraordinary | | |
| Ordinary | X | |
| N/A | | (mark with x) |

Notes: The Respondent achieved compliance on January 29, 2009.

Violation Subtotal: \$375

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

Estimated EB Amount: \$0

Violation Final Penalty Total: \$395

This violation Final Assessed Penalty (adjusted for limits): \$395

Economic Benefit Worksheet

Respondent: Advanced Environmental Recycling Technologies, Inc.
Case ID No.: 37384
Reg. Ent. Reference No.: RN101873164
Media: Used Oil
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 |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|-----------|---------------|-------------|------|----------------|---------------|-----------|
| 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 | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | \$50 | 29-Jan-2009 | 29-Jan-2009 | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to label or mark clearly two containers storing used oil with the words "Used Oil". The Date Required is the January 29, 2009 investigation and the Final Date is the date of compliance.

Avoided Costs

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

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

\$50

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN601020779 Advanced Environmental Recycling Technologies, Inc. Classification: AVERAGE Rating: 3.50
Regulated Entity: RN101873164 ADVANCED ENVIRONMENTAL RECYCLING TECHNOLOGIES Classification: AVERAGE Site Rating: 4.00
ID Number(s):
Location: 8432 EAST RANCH ROAD 2169, JUNCTION, TX, 76849
TCEQ Region: REGION 08 - SAN ANGELO
Date Compliance History Prepared: April 06, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 07, 2004 to April 06, 2009

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator 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 | 06/22/2004 | (276232) |
| 2 | 09/16/2004 | (333230) |
| 3 | 11/10/2006 | (512893) |
| 4 | 01/19/2007 | (537358) |
| 5 | 03/16/2009 | (738052) |

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

Date: 06/22/2004 (276232)

Self NO

Classification: Major

Report?

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

TXR050000 PERMIT

Description: Facility operating without an NOI.

Date: 11/10/2006 (512893)

Self NO

Classification: Moderate

Report?

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

MSGP Part III, Section A(5)(f) PERMIT

Description: Failure to conduct and document the annual employee training according to permit

requirements.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Description: MSGP Part III, Section A(5)(g) PERMIT
Failure to conduct periodic inspections.
Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Description: MSGP Part III, Section A(5)(h) PERMIT
Failure to conduct quarterly visual monitoring.
Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Description: MSGP Part III, A(7)(b-d) PERMIT
Failure to conduct comprehensive site compliance evaluations.
Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.17(a)(8)
30 TAC Chapter 335, SubChapter A 335.4
Description: Unauthorized discharge and storage of industrial solid waste.
Unauthorized discharge and storage of industrial solid waste.

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
ADVANCED ENVIRONMENTAL
RECYCLING TECHNOLOGIES, INC.
RN101873164**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-0432-MLM-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Advanced Environmental Recycling Technologies, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 371 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a reconstituted wood products manufacturing facility at 8432 East Ranch Road 2169, near Junction, Kimble County, Texas (the "Facility").
2. The Facility involves or involved the management of industrial solid waste and used oil as defined in TEX. HEALTH & SAFETY CODE chs. 361 and 371.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 21, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nine Thousand Two Hundred Eighty-Two Dollars (\$9,282) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Seven Thousand Four Hundred Twenty-Six Dollars (\$7,426) of the administrative penalty and One Thousand Eight Hundred Fifty-Six Dollars (\$1,856) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred 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 the Respondent 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 the Respondent has implemented the following corrective measures at the Facility:
 - a. On January 29, 2009 marked the two previously unmarked containers storing used oil with the words "Used Oil"; and
 - b. In a letter to the TCEQ dated February 12, 2009, provided documentation that the Respondent has developed and implemented procedures to ensure records of all solid waste activities are kept on-site along with a notice of intent to conduct waste recycling activities performed at the Facility.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent 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

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to prevent the unauthorized discharge of industrial solid waste, in violation of 30 TEX. ADMIN. CODE § 335.4, as documented during an investigation conducted on January 29, 2009. Specifically, the investigator documented stained soils adjacent to the fueling area. Sample analysis indicated elevated levels of total petroleum hydrocarbons.
2. Failed to provide notice of the intent to conduct the recycling of industrial solid waste or municipal hazardous waste, in violation of 30 TEX. ADMIN. CODE § 335.6(h), as documented

during an investigation conducted on January 29, 2009. Specifically, the Respondent failed to provide notice of recycling activities within 90 days prior to engaging in such activities.

3. Failed to maintain records of all hazardous and industrial solid waste activities, in violation of 30 TEX. ADMIN. CODE § 335.9(a)(1), as documented during an investigation conducted on January 29, 2009. Specifically, the Respondent was not able to provide waste generation records at the request of the regional investigator.
4. Failed to have financial assurance for closure of a recycling facility storing nonhazardous combustible recycling materials outdoors, in violation of 30 TEX. ADMIN. CODE §§ 335.24(k) and 37.921, as documented during an investigation conducted on January 29, 2009. Specifically, the Respondent failed to provide the investigator with proof of financial assurance for the approximately 616 cubic yards of wood and wood-polyethylene composite fiber in the East pile and 4,670 cubic yards of composite wood and recyclable wood fines stored in the North pile at the Facility.
5. Failed to mark or clearly label containers used to store used oil with the words "Used Oil", in violation of 30 TEX. ADMIN. CODE § 324.1 and 40 CODE OF FEDERAL REGULATIONS § 279.22(c)(1), as documented during an investigation conducted on January 29, 2009. Specifically, the investigator documented two used oil containers which were not labeled.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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 requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Advanced Environmental Recycling Technologies, Inc., Docket No. 2009-0432-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. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days of the effective date of this Agreed Order, submit documentation demonstrating an acceptable financial assurance mechanism for closure of the stored combustible recyclable materials, in accordance with 30 TEX. ADMIN. CODE §§ 37.921 and 335.24 to:

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

- b. Within 60 days after the effective date of this Agreed Order, collect representative soil or other appropriate media samples to evaluate the impact of the release and prepare an environmental site assessment to determine whether the release is subject to the Texas Risk Reduction Program ("TRRP") rules in 30 TEX. ADMIN. CODE ch. 350. The environmental site assessment shall be conducted in accordance with TCEQ guidance document "Determining Which Releases are Subject to TRRP" revised October 21, 2003. The environmental site assessment, including remediation plans or justification for no further action, as applicable, shall be submitted for review and approval to:

Environmental Cleanup Section
Remediation Division, MC-137 or 221
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

If the release is subject to TRRP, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(I)); and Institutional Controls under Subchapter F and respond completely and adequately, as determined by the TCEQ, to all letter requests for information within 30 days after the date of such letters, or by any other deadline specified in writing; and

- c. Within 75 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 and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

If 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 fines 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:

Manager, Waste Section
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7013

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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 the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 the Respondent 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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Zedler
For the Executive Director

1/8/2010
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

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

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

Alford Drinkwater
Signature

July 9, 2009
Date

ALFORD DRINKWATER
Name (Printed or typed)
Authorized Representative of
Advanced Environmental Recycling Technologies, Inc.

Sr Vice President
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.