

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0831-MLM-E TCEQ ID: RN105517007 CASE NO.: 37734

RESPONDENT NAME: Saguaro, Corp. dba El Paso C&D Recycling Plant

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 type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> USED OIL
<p>SITE WHERE VIOLATION(S) OCCURRED: El Paso C&D Recycling Plant, 12520 Pelicano Drive, El Paso, El Paso County</p> <p>TYPE OF OPERATION: Municipal solid waste Type V facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on March 19, 2009, alleging the Respondent was operating a cash-for-trash recycling operation without state authorization, that in-plant roads and parking lots were possibly not paved or watered, and that the Respondent was operating without a Storm Water Pollution Prevention Plan ("SWPPP") in place. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 8, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-5690; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Sean Gillespie, President, Saguaro, Corp., P.O. Box 780710, Wichita, Kansas 67278 Respondent's Attorney: Ms. Patricia Finn Braddock, Partner, Fulbright & Jaworski L.L.P., 600 Congress Avenue, Suite 2400, Austin, Texas 78701-2978</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: March 19, 2009</p> <p>Date of Investigation Relating to this Case: March 25, 2009</p> <p>Date of NOV/NOE Relating to this Case: May 8, 2009 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER/WASTE</p> <p>1) Failure to develop and provide to the local fire prevention authority a fire suppression and prevention plan for combustible materials at the Facility [30 TEX. ADMIN. CODE § 328.5(h)].</p> <p>2) Failure to maintain records demonstrating exemption from the requirement to obtain a municipal solid waste ("MSW") permit. Specifically, receipts for customer purchases of recycled materials were illegible [30 TEX. ADMIN. CODE § 328.5(f)(1)].</p> <p>3) Failure to establish and maintain acceptable financial assurance for closure of a recycling facility that stores combustible material outdoors [30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d)].</p> <p>4) Failure to follow the SWPPP. Specifically, there was no rain gauge on-site at the Facility [30 TEX. ADMIN. CODE §§ 281.25(a)(4) and 305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit No. TXR05Y068, Section III.A.1, SWPPP Section 1.1.4].</p> <p>5) Failure to implement Best Management Practices. Specifically, earthen berms were not maintained, unsorted waste materials were placed in direct contact with soil, and containers for small metals were not covered [30 TEX. ADMIN. CODE</p>	<p>Total Assessed: \$12,015</p> <p>Total Deferred: \$2,403 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$267 (remaining \$9,345 due in 35 monthly payments of \$267 each)</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 submitted a MSW registration application on June 18, 2008.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 15 days after the effective date of this Agreed Order, label or mark all containers and tanks used to store used oil with the words "Used Oil".</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Develop and provide to the local fire prevention authority a fire suppression and prevention plan for combustible materials at the Facility;</p> <p>ii. Provide legible receipts for customer purchases of recycled materials which demonstrate exemption from the requirement to obtain a MSW permit and comply with recyclable material storage limits; and</p> <p>iii. Obtain acceptable financial assurance for closure of the recycling Facility.</p> <p>c. Within 60 days after the effective date of this Agreed Order, comply with all conditions of the SWPPP, including but not limited to, maintaining earthen berms, proper management of waste materials, covering containers for small metals during times when the Facility is not in operation, and installation of a rain gauge;</p> <p>d. Respond completely and adequately, as determined by the TCEQ, to all letters requesting information concerning the MSW registration application within 30 days after the date of such requests, or by any other deadline specified in writing until such time that a MSW registration is approved;</p> <p>e. Within 90 days after the effective date of this Agreed Order, obtain the MSW registration and complete the authorization</p>

<p>§§ 281.25(a)(4) and 305.125(1) and TPDES Permit No. TXR05Y068, Sections III.A.5.e, SWPPP Section 3.5].</p> <p>6) Failure to label or mark aboveground storage tanks used to store used oil with the words "Used Oil" [30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS § 279.22(c)(1)].</p>		<p>steps for certification by a Texas-licensed professional engineer that the Facility has been constructed as designed in accordance with the issued registration, request and complete the pre-opening inspection, and obtain operational approval; and</p> <p>f. Within 105 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. through e.</p>
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Additional ID No(s): MSW Permit No. 40237 (pending)



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned PCW	11-May-2009	Screening	2-Jun-2009	EPA Due	
		8-Nov-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Saguaro, Corp. dba El Paso C&D Recycling Plant		
Reg. Ent. Ref. No.	RN105517007		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37734	No. of Violations	5
Docket No.	2009-0831-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Water Quality and Used Oil	Enf. Coordinator	Thomas Greimel
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$10,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0.0% Enhancement Subtotals 2, 3, & 7 **\$0**

Notes: No adjustment for compliance history.

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 **\$0**

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

Total EB Amounts \$542
Approx. Cost of Compliance \$3,090
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal **\$10,500**

OTHER FACTORS AS JUSTICE MAY REQUIRE 4.9% Adjustment **\$515**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 3.

Final Penalty Amount **\$11,015**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$11,015**

DEFERRAL 20.0% Reduction Adjustment **-\$2,203**

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 **\$8,812**

Screening Date 2-Jun-2009

Docket No. 2009-0831-MLM-E

PCW

Respondent Saguaro, Corp. dba El Paso C&D Recycling Plant

Policy Revision 2 (September 2002)

Case ID No. 37734

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN105517007

Media [Statute] Municipal Solid Waste

Enf. Coordinator Thomas Greimel

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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) 0%

>> 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

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 2-Jun-2009	Docket No. 2009-0831-MLM-E	PCW		
Respondent Saguaro, Corp. dba El Paso C&D Recycling Plant		<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 37734		<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN105517007				
Media [Statute] Municipal Solid Waste				
Enf. Coordinator Thomas Greimel				
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 328.5(h)			
Violation Description	Failed to develop and provide to the local fire prevention authority a fire suppression and prevention plan for combustible materials 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	x	<input type="checkbox"/>	<input type="checkbox"/>	
	Percent	25%		
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Percent	0%		
Matrix Notes	Human health or the environment will or could be exposed to pollutants and hazards which would exceed levels that are protective of human health or environmental receptors as a result of the violation.			
	Adjustment	\$7,500		
		\$2,500		
Violation Events				
	Number of Violation Events	3	69	Number of violation days
<small>mark only one with an x</small>	daily	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	weekly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	monthly	x	<input type="checkbox"/>	<input type="checkbox"/>
	quarterly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	annual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	single event	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Violation Base Penalty	\$7,500		
	Three monthly events are recommended from the March 25, 2009 investigation date to the June 2, 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"/>		
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	\$7,500		
Economic Benefit (EB) for this violation				
	Estimated EB Amount	\$21	Statutory Limit Test	
			Violation Final Penalty Total	\$7,868
			This violation Final Assessed Penalty (adjusted for limits)	\$7,868

Economic Benefit Worksheet

Respondent Saguaro, Corp, dba El Paso C&D Recycling Plant
Case ID No. 37734
Reg. Ent. Reference No. RN105517007
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
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)	\$500	25-Mar-2009	30-Jan-2010	0.85	\$21	n/a	\$21

Notes for DELAYED costs

Estimated cost to develop and provide a fire suppression and prevention plan for combustible materials. Date Required is the date of the investigation. Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$21

Screening Date 2-Jun-2009 **Docket No.** 2009-0831-MLM-E **PCW**
Respondent Saguaro, Corp. dba El Paso C&D Recycling Plant *Policy Revision 2 (September 2002)*
Case ID No. 37734 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105517007
Media [Statute] Municipal Solid Waste
Enf. Coordinator Thomas Greimel
Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 328.5(f)(1)
Violation Description Failed to maintain records demonstrating exemption from the requirement to obtain a municipal solid waste permit. Specifically, receipts for customer purchases of recycled materials were illegible.
Base Penalty \$10,000

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 69 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on the documentation of the violation during the March 25, 2009 investigation.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$43 Violation Final Penalty Total \$1,049

This violation Final Assessed Penalty (adjusted for limits) \$1,049

Economic Benefit Worksheet

Respondent Saguaro, Corp. dba El Paso C&D Recycling Plant
Case ID No. 37734
Reg. Ent. Reference No. RN105517007
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
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	\$1,000	25-Mar-2009	30-Jan-2010	0.85	\$43	n/a	\$43
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 maintain legible and adequate records that demonstrate exemption from the requirement to obtain a municipal solid waste permit. Date Required is the date of the investigation. Final Date is the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance TOTAL
\$1,000 \$43

Screening Date 2-Jun-2009	Docket No. 2009-0831-MLM-E
Respondent Saguaro, Corp. dba El Paso C&D Recycling Plant	PCW <small>Policy Revision 2 (September 2002) PCW Revision October 30, 2008</small>
Case ID No. 37734	
Reg. Ent. Reference No. RN105517007	
Media [Statute] Municipal Solid Waste	
Enf. Coordinator Thomas Greimel	
Violation Number 3	
Rule Cite(s)	30 Tex. Admin. Code §§ 37.921 and 328.5(d)
Violation Description	Failed to establish and maintain acceptable financial assurance for closure of a recycling facility that stores combustible material outdoors.
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 <input type="text" value="0%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

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

Violation Base Penalty

One annual penalty event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes

Violation Subtotal

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 Saguaro, Corp. dba El Paso C&D Recycling Plant
Case ID No. 37734
Reg. Ent. Reference No. RN105517007
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
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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]	\$490	20-Jun-2008	25-Mar-2009	1.00	\$25	\$490	\$515
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 provide financial assurance for closure of the Facility. The Date Required is the date the Notice of Intent for the Facility was received. The Final date is the investigation date.

Approx. Cost of Compliance

\$490

TOTAL

\$515

Screening Date: 2-Jun-2009 **Docket No.:** 2009-0831-MLM-E **PCW**
Respondent: Saguaro, Corp. dba El Paso C&D Recycling Plant *Policy Revision 2 (September 2002)*
Case ID No.: 37734 *PCW Revision October 30, 2008*
Reg. Ent. Reference No.: RN105517007
Media [Statute]: Municipal Solid Waste
Enf. Coordinator: Thomas Greimel
Violation Number: 4
Rule Cite(s): 30 Tex. Admin. Code §§ 281.25(a)(4) and 305.125(1) and TPDES Permit No. TXR05Y068, Section III.A.1, SWPPP, Section 1.1.4
Violation Description: Failed to follow the Stormwater Pollution Prevention Plan. Specifically, there was no rain gauge on-site at the Facility.
Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
Potential			x	5%

>> Programmatic Matrix

Falsification				Percent
Major	Moderate	Minor		
				0%

Matrix Notes: Human health or the environment will or could be exposed to insignificant amounts of pollutants and hazards which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment: \$9,500

\$500

Violation Events

Number of Violation Events: 1 Number of violation days: 69

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty: \$500

One single penalty event is recommended.

Good Faith Efforts to Comply

	0.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

\$0

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

Violation Subtotal: \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$4 **Violation Final Penalty Total:** \$525

This violation Final Assessed Penalty (adjusted for limits): \$525

Economic Benefit Worksheet

Respondent Saguaro, Corp. dba El Paso C&D Recycling Plant
Case ID No. 37734
Reg. Ent. Reference No. RN105517007
Media Municipal Solid Waste
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description: No commas or \$	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$100	25-Mar-2009	30-Jan-2010	0.85	\$4	n/a	\$4

Notes for DELAYED costs Estimated cost to maintain a rain guage at the Facility. Date Required is the date of the investigation. Final Date is the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance TOTAL
\$100 \$4

Screening Date 2-Jun-2009	Docket No. 2009-0831-MLM-E	PCW			
Respondent Saguaro, Corp. dba El Paso C&D Recycling Plant	<i>Policy Revision 2 (September 2002)</i>				
Case ID No. 37734	<i>PCW Revision October 30, 2008</i>				
Reg. Ent. Reference No. RN105517007					
Media [Statute] Municipal Solid Waste					
Enf. Coordinator Thomas Greimel					
Violation Number 5					
Rule Cite(s)	30 Tex. Admin. Code §§ 281.25(a)(4) and 305.125(1) and TPDES Permit No. TXR05Y066, Sections III.A.5.e, SWPPP Section 3.5				
Violation Description	Failed to implement Best Management Practices. Specifically, earthen berms were not maintained, unsorted waste materials were placed in direct contact with soil, and containers for small metals were not covered.				
Base Penalty		\$10,000			
>> Environmental, Property and Human Health Matrix					
OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	5%
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	
>> Programmatic Matrix					
Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	0%
Human health or the environment will or could be exposed to insignificant amounts of pollutants and hazards which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.					
Adjustment					\$9,500
					\$500
Violation Events					
Number of Violation Events		1	Number of violation days		69
<i>mark only one with an x</i>	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input checked="" type="checkbox"/>			
One single penalty event is recommended.					Violation Base Penalty
					\$500
Good Faith Efforts to Comply					
		0.0% Reduction		\$0	
		Before NOV	NOV to EOPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	<input type="text"/>	<input type="text"/>			
N/A	<input checked="" type="checkbox"/>	(mark with x)			
Notes	The Respondent does not meet the good faith criteria for this violation.				
Violation Subtotal					\$500
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		\$60	Violation Final Penalty Total		\$525
This violation Final Assessed Penalty (adjusted for limits)					\$525

Economic Benefit Worksheet

Respondent Saguaro, Corp. dba El Paso C&D Recycling Plant
Case ID No. 37734
Reg. Ent. Reference No. RN105517007
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
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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	\$1,000	25-Mar-2009	30-Jan-2010	0.85	\$3	\$57	\$60
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 implement all Best Management Practices, including but not limited to proper maintenance of earthen berms and proper management of waste and materials intended for recycling. Date Required is the date of the investigation. Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$60



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	11-May-2009	Screening	2-Jun-2009	EPA Due	
	PCW	2-Jun-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Saguaro, Corp. dba El Paso C&D Recycling Plant		
Reg. Ent. Ref. No.	RN105517007		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37734	No. of Violations	1
Docket No.	2009-0831-MLM-E	Order Type	1660
Media Program(s)	Used Oil	Government/Non-Profit	No
Multi-Media	Municipal Solid Waste and Water Quality	Enf. Coordinator	Thomas Greimel
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section			
TOTAL BASE PENALTY (Sum of violation base penalties)		Subtotal 1	\$1,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>			
Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
Notes	No adjustment for compliance history.		
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	\$0
Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$521	<small>*Capped at the Total EB \$ Amount</small>	
Approx. Cost of Compliance	\$640		
SUM OF SUBTOTALS 1-7		Final Subtotal	\$1,000
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>			
Notes			
		Final Penalty Amount	\$1,000
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$1,000
DEFERRAL	20.0% Reduction	Adjustment	-\$200
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>			
Notes	Deferral offered for expedited settlement.		
PAYABLE PENALTY			\$800

Screening Date 2-Jun-2009

Docket No. 2009-0831-MLM-E

PCW

Respondent Saguaro, Corp. dba El Paso C&D Recycling Plant

Policy Revision 2 (September 2002)

Case ID No. 37734

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN105517007

Media [Statute] Used Oil

Enf. Coordinator Thomas Greimel

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 2-Jun-2009	Docket No. 2009-0831-MLM-E	PGW		
Respondent Saguaro, Corp. dba El Paso C&D Recycling Plant		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 37734		<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No. RN105517007				
Media [Statute] Used Oil				
Enf. Coordinator Thomas Greimel				
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 324.6 and 40 Code of Federal Regulations § 279.22(c)(1)			
Violation Description	Failed to label or mark aboveground storage tanks used to store used oil with the words "Used Oil."			
Base Penalty		\$2,500		
>> 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 <input type="text" value="0%"/>
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.			
Adjustment				\$2,250
\$250				
Violation Events				
Number of Violation Events		<input type="text" value="3"/>	Number of violation days	
		<input type="text" value="69"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input checked="" type="checkbox"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
single event	<input type="text"/>			
Violation Base Penalty		\$750		
Three monthly events are recommended from the March 25, 2009 investigation date to the June 2, 2009 screening date.				
Good Faith Efforts to Comply		<input type="text" value="0.0%"/>	Reduction	
		<input type="text" value="\$0"/>		
	Extraordinary	<input type="text"/>	Before NOV	NOV to EDPRP/Settlement Offer
	Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
	N/A	<input checked="" type="checkbox"/>	(mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal		\$750		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$6"/>	Violation Final Penalty Total	
				\$750
This violation Final Assessed Penalty (adjusted for limits)				\$750

Economic Benefit Worksheet

Respondent: Saguaro, Corp. dba El Paso C&D Recycling Plant
Case ID No. 37734
Reg. Ent. Reference No. RN105517007
Media: Used Oil
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime 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)	\$150	25-Mar-2009	30-Jan-2010	0.85	\$6	n/a	\$6

Notes for DELAYED costs

Estimated cost to label containers containing used oil. Date Required is the date of the investigation. Final Date is the estimated 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	Overtime 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

\$150

TOTAL

\$6

Compliance History Report

Customer/Respondent/Owner-Operator: CN603356502 Saguaro, Corp. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105517007 El Paso C&D Recycling Plant Classification: AVERAGE BY DEFAULT Site Rating: 3.01
ID Number(s): MUNICIPAL SOLID WASTE PROCESSING PERMIT 40237
AIR NEW SOURCE PERMITS REGISTRATION 84972
AIR NEW SOURCE PERMITS AFS NUM 4814100737
STORMWATER PERMIT TXR05Y068
Location: 12520 Pelicano Drive, El Paso, Texas 79936
TCEQ Region: REGION 06 - EL PASO
Date Compliance History Prepared: June 10, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 10, 2004 to June 10, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Thomas Greimel Phone: (512) 239-5690

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.)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- 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
SAGUARO, CORP. DBA EL PASO
C&D RECYCLING PLANT
RN105517007

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0831-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 Saguaro, Corp. dba El Paso C&D Recycling Plant ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 371 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by the law firm of Fulbright & Jaworski L.L.P., appear before the Commission and together stipulate that:

1. The Respondent owns and operates a municipal solid waste Type V facility located at 12520 Pelicano Drive, in El Paso, El Paso County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal 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 May 13, 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 Twelve Thousand Fifteen Dollars (\$12,015) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

The Respondent has paid Two Hundred Sixty-Seven Dollars (\$267) of the administrative penalty and Two Thousand Four Hundred Three Dollars (\$2,403) 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 to pay all or part of the deferred penalty.

The remaining amount of Nine Thousand Three Hundred Forty-Five Dollars (\$9,345) of the administrative penalty shall be payable in 35 monthly payments of Two Hundred Sixty-Seven Dollars (\$267) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 submitted a municipal solid waste (MSW) registration application on June 18, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that 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 develop and provide to the local fire prevention authority a fire suppression and prevention plan for combustible materials at the Facility, in violation of 30 TEX. ADMIN. CODE § 328.5(h), as documented during an investigation conducted on March 25, 2009.

2. Failed to maintain records demonstrating exemption from the requirement to obtain a municipal solid waste (MSW) permit, in violation of 30 TEX. ADMIN. CODE § 328.5(f)(1), as documented during an investigation conducted on March 25, 2009. Specifically, receipts for customer purchases of recycled materials were illegible.
3. Failed to establish and maintain acceptable financial assurance for closure of a recycling facility that stores combustible material outdoors, in violation of 30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d), as documented during an investigation conducted on March 25, 2009.
4. Failed to follow the Storm Water Pollution Prevention Plan ("SWPPP"), in violation of 30 TEX. ADMIN. CODE §§ 281.25(a)(4) and 305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit No. TXR05Y068, Section III.A.1, SWPPP Section 1.1.4, as documented during an investigation conducted on March 25, 2009. Specifically, there was no rain gauge on-site at the Facility.
5. Failed to implement Best Management Practices, in violation of 30 TEX. ADMIN. CODE §§ 281.25(a)(4) and 305.125(i) and TPDES Permit No. TXR05Y068, Sections III.A.5.e, SWPPP Section 3.5, as documented during an investigation conducted on March 25, 2009. Specifically, earthen berms were not maintained, unsorted waste materials were placed in direct contact with soil, and containers for small metals were not covered.
6. Failed to label or mark aboveground storage tanks used to store used oil with the words "Used Oil," in violation of 30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS § 279.22(c)(1), as documented during an investigation conducted on March 25, 2009.

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: Saguaro, Corp. dba El Paso C&D Recycling Plant, Docket No. 2009-0831-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 15 days after the effective date of this Agreed Order, label or mark all containers and tanks used to store used oil with the words "Used Oil," in accordance with 30 TEX. ADMIN. CODE § 324.6;
- b. Within 30 days after the effective date of this Agreed Order:
 - i. Develop and provide to the local fire prevention authority a fire suppression and prevention plan for combustible materials at the Facility, in accordance with 30 TEX. ADMIN. CODE § 328.5(h);
 - ii. Provide legible receipts for customer purchases of recycled materials which demonstrate exemption from the requirement to obtain a MSW permit and comply with recyclable material storage limits, in accordance with 30 TEX. ADMIN. CODE § 328.5(f)(1); and
 - iii. Obtain acceptable financial assurance for closure of the recycling Facility, in accordance with 30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d).
- c. Within 60 days after the effective date of this Agreed Order, comply with all conditions of the SWPPP, including but not limited to, maintaining earthen berms, proper management of waste materials, covering containers for small metals during times when the Facility is not in operation, and installation of a rain gauge, in accordance with 30 TEX. ADMIN. CODE §§ 281.25(a)(4) and 305.125(1) and TPDES Permit No. TXR05Y068, Sections III.A.1 and III.A.5.e, SWPPP Sections 1.1.4 and 3.5;
- d. Respond completely and adequately, as determined by the TCEQ, to all letters requesting information concerning the MSW registration application within 30 days after the date of such requests, or by any other deadline specified in writing until such time that a MSW registration is approved.
- e. Within 90 days after the effective date of this Agreed Order, obtain the MSW registration and complete the authorization steps for certification by a Texas-licensed professional engineer that the facility has been constructed as designed in accordance with the issued registration, request and complete the pre-opening inspection, and obtain operational approval in accordance with 30 TEX. ADMIN. CODE § 330.73; and
- f. Within 105 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false

information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

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 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

Saguaro, Corp. dba El Paso C&D Recycling Plant

DOCKET NO. 2009-0831-MLM-E

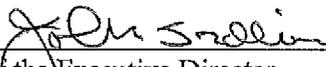
Page 6

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



For the Executive Director

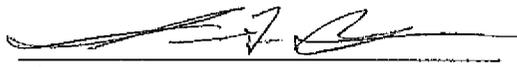
2/25/2010
Date

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.



Signature

12-26-09
Date

Sean Gillespie
Name (Printed or typed)
Authorized Representative of
Saguaro, Corp. dba El Paso C&D Recycling Plant

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.

