

**Executive Summary – Enforcement Matter – Case No. 40378**  
**LARRY CATHEY D/B/A WACO WOOD RECYCLING AND MATERIALS**  
**RN105211361**  
**Docket No. 2010-1495-MSW-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Indifference to legal duty based on violation of a previous order.

**Media:**

MSW

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

268 Antler Road, Waco, McLennan County

**Type of Operation:**

recycling facility

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** September 2, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$8,833

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** N/A

**Total Paid to General Revenue:** \$258

**Total Due to General Revenue:** \$8,575

Payment Plan: 35 payments of \$245 each

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Average  
Site/RN – Poor

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** June 25, 2010  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** July 21, 2010

***Violation Information***

1. Failed to maintain the minimum setback distance of 50 feet from all property lines to the edge of the area for storing processed and feedstock material [30 TEX. ADMIN. CODE § 332.8(b)(1)].
2. Failed to provide a report to the TCEQ with information describing the manner in which materials will be stored before and after recycling and how the materials will be processed for recycling [30 TEX. ADMIN. CODE §§ 328.5(b)(2) and (3) and 330.11(a)].
3. Failed to obtain an acceptable financial assurance mechanism for closure of the Facility [30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d).]
4. Failed to provide documentation demonstrating the recycling or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six month period [30 TEX. ADMIN. CODE § 328.5(f)(1)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**  
N/A

**Technical Requirements:**

1. Within 30 days:
  - a. Begin maintaining a minimum setback distance of 50 feet from all property lines to the edge of the area for storing processed material;
  - b. Submit documentation describing the manner in which materials will be stored before and prior to recycling and how the materials will be processed for recycling;
  - c. Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility; and
  - d. Submit documentation demonstrating that at least 50% by weight or volume of the material accumulated at the Facility for recycling is recycled or transferred to a different site for recycling.
2. Or, in lieu of Technical Requirement No. 1:
  - a. Immediately, cease accepting any additional MSW at the Facility; and
  - b. Within 30 days, remove all MSW from the Facility and dispose of it at an authorized facility.
3. Within 45 days, submit written certification to demonstrate compliance.

***Litigation Information***

**Date Petition(s) Filed:** December 6, 2010  
**Date Answer(s) Filed:** December 16, 2010  
**SOAH Referral Date:** February 17, 2011

**Executive Summary – Enforcement Matter – Case No. 40378**  
**LARRY CATHEY D/B/A WACO WOOD RECYCLING AND MATERIALS**  
**RN105211361**  
**Docket No. 2010-1495-MSW-E**

**Hearing Date(s):**

Preliminary hearing: April 14, 2011 (waived)  
Evidentiary hearing: August 4, 2011

**Settlement Date:** August 2, 2011

***Contact Information***

**TCEQ Attorneys:** Jeffrey Huhn, Litigation Division, (210) 403-4023  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ SEP Coordinator:** N/A

**TCEQ Enforcement Coordinator:** Michael Meyer, Waste Enforcement Section, (512) 239- 4492

**TCEQ Regional Contact:** Frank Burleson, Waco Regional Office, (254) 761-3001

**Respondent:** Larry Cathey, 268 Antler Road, Waco, Texas 76712

**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	26-Jul-2010	<b>Screening</b>	12-Aug-2010	<b>EPA Due</b>	
	<b>PCW</b>	29-Jul-2011				

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

<b>CASE INFORMATION</b>						
<b>Enf./Case ID No.</b>	40378	<b>No. of Violations</b>	4			
<b>Docket No.</b>	2010-1495-MSW-E	<b>Order Type</b>	Findings			
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No			
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Michael Meyer			
		<b>EC's Team</b>	Enforcement Team 6			
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$0	<b>Maximum</b>	\$10,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$3,500
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	69.0%	Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$2,415
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Notes

Enhancement for two NOVs with dissimilar violations, two agreed orders with denial of liability, and for repeat violator.

<b>Culpability</b>	No	0.0%	Enhancement	<b>Subtotal 4</b>	\$0
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Notes

The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0%	Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$3,239
Approx. Cost of Compliance	\$8,779

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$5,915
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	49.3%	<b>Adjustment</b>	\$2,918
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Enhancement to capture the avoided cost associated with Violation No. 3.

<b>Final Penalty Amount</b>	\$8,833
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$8,833
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$8,833
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**Screening Date** 12-Aug-2010

**Docket No.** 2010-1495-MSW-E

**PCW**

**Respondent** Larry Cathey dba Waco Wood Recycling and Mate

*Policy Revision 2 (September 2002)*

**Case ID No.** 40378

*PCW Revision October 30, 2008*

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

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Michael Meyer

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	2	40%
	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 ( <i>number of judgements or consent decrees meeting criteria</i> )	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 ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	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 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	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)** 44%

#### >> Repeat Violator (Subtotal 3)

Yes

**Adjustment Percentage (Subtotal 3)** 25%

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

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

#### >> Compliance History Summary

**Compliance History Notes**

Enhancement for two NOVs with dissimilar violations, two agreed orders with denial of liability, and for repeat violator.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 69%

Screening Date 12-Aug-2010

Docket No. 2010-1495-MSW-E

PCW

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Policy Revision 2 (September 2002)

Case ID No. 40378

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105211361

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

Violation Number 1

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

Violation Description

Failed to maintain the minimum setback distance of 50 feet from all property lines to the edge of the area for storing processed and feedstock material. Specifically, the minimum setback distance from the green feedstock was 25 feet from the property line.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1 48 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$500

One single event is recommended.

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 \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$283

Violation Final Penalty Total \$1,262

This violation Final Assessed Penalty (adjusted for limits) \$1,262

## Economic Benefit Worksheet

**Respondent** Larry Cathey dba Waco Wood Recycling and Materials  
**Case ID No.** 40378  
**Req. Ent. Reference No.** RN105211361  
**Media** Municipal Solid Waste  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$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)	\$5,000	25-Jun-2010	12-Aug-2011	1.13	\$283	n/a	\$283

Notes for DELAYED costs

Estimated cost to maintain the minimum setback distance of 50 feet from the property line for storing processed and feedstock material. The Date Required is the investigation date and the Final Date is the projected compliance date.

### 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

\$5,000

**TOTAL**

\$283

Screening Date 12-Aug-2010

Docket No. 2010-1495-MSW-E

PCW

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Policy Revision 2 (September 2002)

Case ID No. 40378

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105211361

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 328.5(b)(2) and (3) and 330.11(a)

Violation Description

Failed to provide a report to the TCEQ with information describing the manner in which materials will be stored before and after recycling and how the materials will be processed for recycling. Specifically, the Respondent did not respond to the Notice of Deficiency letter.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

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 48 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the June 25, 2010 investigation to the August 12, 2010 screening date.

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 \$19

Violation Final Penalty Total \$2,524

This violation Final Assessed Penalty (adjusted for limits) \$2,524

## Economic Benefit Worksheet

**Respondent** Larry Cathey dba Waco Wood Recycling and Materials  
**Case ID No.** 40378  
**Req. Ent. Reference No.** RN105211361  
**Media** Municipal Solid Waste  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

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	\$500	25-Jun-2010	31-Mar-2011	0.76	\$19	n/a	\$19
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to file a report to the TCEQ detailing the manner in which materials will be stored prior to and after recycling and how the materials will be processed for recycling. The Date Required is the investigation date and the Final Date is the projected compliance date.

### 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**

\$19

Screening Date 12-Aug-2010

Docket No. 2010-1495-MSW-E

PCW

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Policy Revision 2 (September 2002)

Case ID No. 40378

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105211361

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 328.5(d) and 30 Tex. Admin. Code § 37.921

Violation Description Failed to obtain an acceptable financial assurance mechanism for closure of the facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

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 1 365 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$1,000

One annual event is recommended.

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 \$2,918

Violation Final Penalty Total \$2,524

This violation Final Assessed Penalty (adjusted for limits) \$2,524

## Economic Benefit Worksheet

**Respondent** Larry Cathey dba Waco Wood Recycling and Materials  
**Case ID No.** 40378  
**Req. Ent. Reference No.** RN105211361  
**Media** Municipal Solid Waste  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$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]	\$2,779	25-Jun-2009	25-Jun-2010	1.00	\$139	\$2,779	\$2,918
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 establish and maintain financial assurance for closure of the facility. The Date Required is one year prior to the investigation and the Final Date is the investigation date.

Approx. Cost of Compliance

\$2,779

**TOTAL**

\$2,918

Screening Date 12-Aug-2010

Docket No. 2010-1495-MSW-E

PCW

Respondent Larry Cathey dba Waco Wood Recycling and Materials

Policy Revision 2 (September 2002)

Case ID No. 40378

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105211361

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

Violation Number 4

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

Violation Description

Failed to provide documentation demonstrating the recycling of or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six month period.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

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 48 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.

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 \$19

Violation Final Penalty Total \$2,524

This violation Final Assessed Penalty (adjusted for limits) \$2,524

## Economic Benefit Worksheet

**Respondent** Larry Cathey dba Waco Wood Recycling and Materials  
**Case ID No.** 40378  
**Req. Ent. Reference No.** RN105211361  
**Media** Municipal Solid Waste  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	25-Jun-2010	31-Mar-2011	0.76	\$19	n/a	\$19
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 records demonstrating that at least 50% of material accumulated on-site is being recycled every six months. The Date Required is the investigation date and the Final Date is the projected compliance date.

### 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**

\$19

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602950636 CATHEY, LARRY Classification: AVERAGE Rating: 39.09  
Regulated Entity: RN105211361 WACO WOOD RECYCLING AND MATERIALS Classification: POOR Site Rating: 114.29  
ID Number(s):  
Location: 268 ANTLER RD, WACO, TX, 76712  
TCEQ Region: REGION 09 - WACO  
Date Compliance History Prepared: September 13, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 13, 2005 to September 13, 2010  
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: 9/1/2010 Repeat Violator: YES

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 08/31/2009 ADMINORDER 2008-1368-MLM-E

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

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

Classification: Moderate  
Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)

Description: Failure to prevent the unauthorized discharge of municipal solid waste into or adjacent to waters of the state.

Effective Date: 02/07/2010 ADMINORDER 2008-0727-MSW-E

Classification: Moderate  
Citation: 30 TAC Chapter 332, SubChapter A 332.8(b)(1)

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

Classification: Minor  
Citation: 30 TAC Chapter 328, SubChapter A 328.5(h)

Description: Failure to have a fire prevention and suppression plan.

Classification: Minor  
Citation: 30 TAC Chapter 328, SubChapter A 328.5(d)  
30 TAC Chapter 37, SubChapter J 37.921(a)

Description: Failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors as documented on May 7, 2007.

Classification: Minor  
Citation: 30 TAC Chapter 328, SubChapter A 328.5(f)(1)

Description: Failing to provide documentation showing the recycling of or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six month period as documented on May 7, 2007.

Classification: Major  
Citation: 30 TAC Chapter 328, SubChapter A 328.5(b)  
30 TAC Chapter 330, SubChapter A 330.11(e)

Description: Failed to submit a Notice of Intent to operate a Recycling Facility to the Executive Director at least 90 days prior to engaging in recycling activities and to submit a form or forms describing the types of materials being accepted for recycling, any storage of materials prior to recycling, how the materials will be recycled and updates or changes to information contained in the facility report within 90 days of the effective date of the change.

B. Any criminal convictions of the state of Texas and the federal government.  
N/A

C. Chronic excessive emissions events.  
N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	11/09/2006	(513014)
2	10/09/2007	(570254)
3	10/09/2007	(570256)
4	10/09/2007	(573565)
5	11/06/2007	(598426)
6	03/19/2008	(637897)
7	07/11/2008	(682838)
8	06/17/2010	(803389)
9	07/22/2010	(829929)

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

Date: 08/28/2006 (450214)  
Self Report? NO Classification: Major  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 332, SubChapter A 332.4(1)  
Description: Failure to obtain a permit for wastewater generated from a livestock manure compost operation.

Date: 10/05/2007 (570256)  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 327 327.5(c)  
Description: Failure to submit a written report of the spill to the Waco Regional Office within 30 working days of the incident.

F. Environmental audits.  
N/A

G. Type of environmental management systems (EMSs).  
N/A

H. Voluntary on-site compliance assessment dates.  
N/A

I. Participation in a voluntary pollution reduction program.  
N/A

J. Early compliance.  
N/A

Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
LARRY CATHEY D/B/A WACO  
WOOD RECYCLING AND  
MATERIALS;  
RN105211361**

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§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2010-1495-MSW-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Larry Cathey d/b/a Waco Wood Recycling and Materials ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, presented this Agreed Order to the Commission.

Respondent understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Respondent owns and operates a recycling facility located at 268 Antler Road, Waco, McLennan County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on June 25, 2010, a TCEQ Waco Regional Office investigator documented that Respondent:
  - a. Failed to maintain the minimum setback distance of 50 feet from all property lines to the edge of the area for storing processed and feedstock material. Specifically, the minimum setback distance from the green feedstock was 25 feet from the property line;

- b. Failed to provide a report to the TCEQ with information describing the manner in which materials will be stored before and after recycling and how the materials will be processed for recycling. Specifically, Respondent did not respond to a Notice of Deficiency letter dated October 12, 2009;
  - c. Failed to obtain an acceptable financial assurance mechanism for closure of the Facility; and
  - d. Failed to provide documentation demonstrating the recycling of or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six month period.
3. Respondent received notice of the violations on or about July 26, 2010.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to maintain the minimum setback distance of 50 feet from all property lines to the edge of the area for storing processed and feedstock material, in violation of 30 TEX. ADMIN. CODE § 332.8(b)(1).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide a report to the TCEQ with information describing the manner in which materials will be stored before and after recycling and how the materials will be processed for recycling, in violation of 30 TEX. ADMIN. CODE §§ 328.5(b)(2) and (3) and 330.11(a).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to obtain an acceptable financial assurance mechanism for closure of the Facility, in violation of 30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed provide documentation demonstrating the recycling of or transfer to a different site for recycling at least 50% by weight or volume of material accumulated at the beginning of the period during each subsequent six month period, in violation of 30 TEX. ADMIN. CODE § 328.5(f)(1).
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of eight thousand eight hundred thirty-three dollars (\$8,833.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondent paid two hundred fifty-eight dollars (\$258.00) of the administrative penalty. The remaining amount of eight thousand five hundred seventy-five dollars (\$8,575.00) of

the administrative penalty shall be payable in thirty-five (35) monthly payments of two hundred forty-five dollars (\$245.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 7, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Larry Cathey d/b/a Waco Wood Recycling and Materials, Docket No. 2010-1495-MSW-E" to:

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

2. Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, Respondent shall:
    - i. Begin maintaining a minimum setback distance of 50 feet from all property lines to the edge of the area for storing processed material, in accordance with 30 TEX. ADMIN. CODE § 332.8(b)(1) (Conclusion of Law No. 2);
    - ii. Submit documentation describing the matter in which materials will be stored before and prior to recycling and how the materials will be processed for recycling, in accordance with 30 TEX. ADMIN. CODE §§ 328.5(b)(2) and 330.11(a) (Conclusion of Law No. 3);
    - iii. Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 328.5(d) and 37.921 (Conclusion of Law No. 4); and

- iv. Submit documentation demonstrating that at least 50% by weight or volume of the material accumulated at the Facility for recycling is recycled or transferred to a different site for recycling, in accordance with 30 TEX. ADMIN. CODE § 328.5(f)(1) (Conclusion of Law No. 5).
- b. Or, in lieu of Ordering Provisions Nos. 2.a.i. through 2.a.iv., Respondent shall:
  - i. Immediately upon the effective date of this Agreed Order, cease accepting any additional MSW at the Facility; and
  - ii. Within 30 days after the effective date of this Agreed Order, remove all MSW from the Facility and dispose of it at an authorized facility.
- c. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 2.d. below, to demonstrate compliance with either Ordering Provisions Nos. 2.a.i. through 2.a.iv., or Ordering Provision No. 2.b., as applicable.
- d. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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."

Respondent shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

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

- 3. All relief not expressly granted in this Agreed Order is denied.

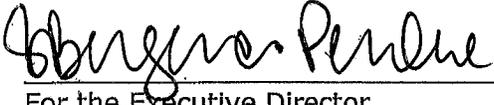
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If Respondent fails to comply 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
8. 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.
9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

10. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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

9/9/2011  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Larry Cathey dba Waco Wood Recycling and Materials, 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Larry Cathey

8-2-11  
Date