

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2011-0034-MSW-E **TCEQ ID:** RN106016512 **CASE NO.:** 40957
RESPONDENT NAME: R2R Recycling, L.L.C.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: R2R Recycling, L.L.C., 12700 Calloway Cemetery Road, Arlington, Tarrant County

TYPE OF OPERATION: Recycling facility

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: A complaint was received on August 13, 2010, alleging that the facility was accepting municipal solid waste for money and the sign reads "Recycling". There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on May 9, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Tate Barrett, Enforcement Division, Enforcement Team 7, MC R-12, (713) 422-8968; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

Respondent: Mr. Matthew J. Bowen, President, R2R Recycling, L.L.C., 2202 Wolf Way, West Des Moines, Iowa 50265

Respondent's Attorney: Not represented by counsel on this enforcement matter

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: August 13, 2010</p> <p>Date of Investigation Relating to this Case: August 17, 2010 through October 15, 2010</p> <p>Date of NOV/NOE Relating to this Case: December 13, 2010 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WASTE</p> <p>1) Failed to provide a completed Notice of Intent ("NOI") to operate a recycling facility to the TCEQ prior to the commencement of new operations [30 TEX. ADMIN. CODE § 328.5(b)].</p> <p>2) Failed to provide a closure cost estimate for combustible materials stored outdoors at least 90 days prior to the receipt of materials [30 TEX. ADMIN. CODE § 328.5(c)(1)].</p> <p>3) Failed to make available a copy of the Fire Prevention and Suppression Plan to the local fire prevention authority having jurisdiction over the Facility for review and coordination [30 TEX. ADMIN. CODE § 328.5(h)].</p> <p>4) Failed to prevent acceptance of 12 cubic yards of recyclable waste containing greater than 10% incidental non-recyclable waste. Specifically, on October 15, 2010, 12 cubic yards of shingles were accepted that also consisted of more than 1.2 cubic yards of nails and trash [30 TEX. ADMIN. CODE § 328.4(d)].</p>	<p>Total Assessed: \$2,250</p> <p>Total Deferred: \$450 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,800</p> <p>Compliance History Classifications: Person/CN - Site/RN -</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Submitted a NOI to operate a recycling facility on September 14, 2010; and</p> <p>b. Submitted a closure cost estimate that was approved by the TCEQ Municipal Solid Waste Permits Section on October 22, 2010.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 10 days after the effective date of this Agreed Order, submit a "Fire Prevention and Suppression Plan" to the local fire prevention authority having jurisdiction over the Facility for review and coordination.</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Conduct employee training in the inspection of incoming loads to assure they contain less than 10% non-recyclable waste; and</p> <p>ii. Begin maintaining records of loads that have been rejected for containing greater than 10% non-recyclable waste.</p> <p>c. Within 45 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 b.ii.</p>

Additional ID No(s): MSW 100279



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	20-Dec-2010	Screening	22-Dec-2010	EPA Due	
	PCW	4-Jan-2011				

RESPONDENT/FACILITY INFORMATION			
Respondent	R2R Recycling, L.L.C.		
Reg. Ent. Ref. No.	RN106016512		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	40957	No. of Violations	3	
Docket No.	2011-0034-MSW-E	Order Type	1660	
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Tate Barrett	
		EC's Team	Enforcement Team 7	
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,500
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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
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$250
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
<small>Total EB Amounts</small>	\$168		
<small>Approx. Cost of Compliance</small>	\$7,950		
<small>*Capped at the Total EB \$ Amount</small>			

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,250
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$2,250

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,250
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DEFERRAL	20.0% Reduction	Adjustment	-\$450
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$1,800
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Screening Date 22-Dec-2010

Docket No. 2011-0034-MSW-E

PCW

Respondent R2R Recycling, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 40957

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106016512

Media [Statute] Municipal Solid Waste

Enf. Coordinator Tate Barrett

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<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) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

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 22-Dec-2010

Docket No. 2011-0034-MSW-E

PCW

Respondent R2R Recycling, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 40957

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106016512

Media [Statute] Municipal Solid Waste

Enf. Coordinator Tate Barrett

Violation Number 1

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

Violation Description Failed to provide a completed Notice of Intent ("NOI") to operate a recycling facility to the TCEQ prior to the commencement of new operations.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (10%).

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 28

Table for frequency: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$1,000

One monthly event is recommended based on documentation of the violation during the August 17, 2010 investigation to the September 14, 2010 compliance date.

Good Faith Efforts to Comply

25.0% Reduction \$250

Table for Good Faith Efforts: Extraordinary, Ordinary (marked with x), N/A.

Notes The Respondent came into compliance on September 14, 2010, prior to the December 13, 2010 Notice of Enforcement.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$25

Violation Final Penalty Total \$750

This violation Final Assessed Penalty (adjusted for limits) \$750

Economic Benefit Worksheet

Respondent R2R Recycling, L.L.C.
Case ID No. 40957
Reg. Ent. Reference No. RN106016512
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$5,000	9-Aug-2010	14-Sep-2010	0.10	\$25	n/a	\$25
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a completed NOI to the TCEQ. The date required is the date operations began, and the final date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$25

Screening Date 22-Dec-2010

Docket No. 2011-0034-MSW-E

PCW

Respondent R2R Recycling, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 40957

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106016512

Media [Statute] Municipal Solid Waste

Enf. Coordinator Tate Barrett

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 328.5(c)(1) and (h)

Violation Description Failed to provide a closure cost estimate for combustable materials stored outdoors at least 90 days prior to the receipt of materials. Also, failed to make available a copy of the Fire Prevention and Suppression Plan to the local fire prevention authority having jurisdiction over the Facility for review and coordination.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (10%).

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 128

Table for frequency selection: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked 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 \$135

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent R2R Recycling, L.L.C.
Case ID No. 40957
Reg. Ent. Reference No. RN106016512
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	\$2,500	9-Aug-2010	22-Aug-2011	1.04	\$129	n/a	\$129
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)	\$250	11-May-2010	22-Oct-2010	0.45	\$6	n/a	\$6

Notes for DELAYED costs

Estimated costs to submit a cost closure estimate (\$250) to the TCEQ and a copy of the Fire Prevention and Suppression plan to the local fire prevention authority (\$2,500). The dates required are 90 days prior to the receipt of materials and the date operations began, and the final dates are the estimated date of compliance and the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$2,750	TOTAL	\$135
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Screening Date 22-Dec-2010
Respondent R2R Recycling, L.L.C.
Case ID No. 40957
Reg. Ent. Reference No. RN106016512
Media [Statute] Municipal Solid Waste
Enf. Coordinator Tate Barrett

Docket No. 2011-0034-MSW-E

PCW

Policy Revision 2 (September 2002)
 PCW Revision October 30, 2008

Violation Number

Rule Cite(s)

Violation Description

Failed to prevent acceptance of 12 cubic yards of recyclable waste containing greater than 10% incidental non-recyclable waste. Specifically, on October 15, 2010, 12 cubic yards of shingles were accepted that also consisted of more than 1.2 cubic yards of nails and trash.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

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

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 type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

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="text" value="x"/>	<input type="text" value="(mark with x)"/>

Notes

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

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 R2R Recycling, L.L.C.
Case ID No. 40957
Reg. Ent. Reference No. RN106016512
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	\$100	15-Oct-2010	22-Aug-2011	0.85	\$4	n/a	\$4
Training/Sampling	\$100	15-Oct-2010	22-Aug-2011	0.85	\$4	n/a	\$4
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 costs of training staff in the inspection of incoming loads to ensure they contain less than 10% non-recyclable materials (\$100) and maintaining a log of rejected loads containing greater than 10% non-recyclable waste (\$100). The dates required are the investigation date and the final dates are the estimated dates 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

\$200

TOTAL

\$9

Compliance History

Customer/Respondent/Owner-Operator: CN603738105 R2R Recycling, L.L.C. Classification: Rating:
Regulated Entity: RN106016512 R2R Recycling, L.L.C. Classification: Site Rating:
ID Number(s): MUNICIPAL SOLID WASTE PROCESSING PERMIT 100279
Location: 12700 CALLOWAY CEMETERY RD, ARLINGTON, TX, 76012
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: December 21, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: December 21, 2005 to December 21, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Tate Barrett Phone: (713) 422-8968

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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.

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, 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
R2R RECYCLING, L.L.C.
RN106016512**

**§ BEFORE THE
§ TEXAS COMMISSION ON
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2011-0034-MSW-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 R2R Recycling, L.L.C. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a recycling facility at 12700 Calloway Cemetery Road in Arlington, Tarrant County, Texas (the "Facility").
2. The Facility involves the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
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 December 18, 2010.
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 Two Thousand Two Hundred Fifty Dollars (\$2,250) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Eight Hundred Dollars (\$1,800) of the administrative penalty and Four Hundred Fifty Dollars (\$450) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Submitted a Notice of Intent ("NOI") to operate a recycling facility on September 14, 2010; and
 - b. Submitted a closure cost estimate that was approved by the TCEQ Municipal Solid Waste Permits Section on October 22, 2010.
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 provide a completed NOI to operate a recycling facility to the TCEQ prior to the commencement of new operations, in violation of 30 TEX. ADMIN. CODE § 328.5(b), as documented during an investigation conducted on August 17, 2010.
2. Failed to provide a closure cost estimate for combustible materials stored outdoors at least 90 days prior to the receipt of materials, in violation of 30 TEX. ADMIN. CODE § 328.5(c)(1), as documented during an investigation conducted on August 17, 2010.

3. Failed to make available a copy of the Fire Prevention and Suppression Plan to the local fire prevention authority having jurisdiction over the Facility for review and coordination, in violation of 30 TEX. ADMIN. CODE § 328.5(h), as documented during an investigation conducted on August 17, 2010.
4. Failed to prevent acceptance of 12 cubic yards of recyclable waste containing greater than 10% incidental non-recyclable waste, in violation of 30 TEX. ADMIN. CODE § 328.4(d), as documented during an investigation conducted on October 15, 2010. Specifically, on October 15, 2010, 12 cubic yards of shingles were accepted that also consisted of more than 1.2 cubic yards of nails and trash.

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: R2R Recycling, L.L.C., Docket No. 2011-0034-MSW-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 10 days after the effective date of this Agreed Order, submit a "Fire Prevention and Suppression Plan" to the local fire prevention authority having jurisdiction over the Facility for review and coordination, in accordance with 30 TEX. ADMIN. CODE § 328.5.
 - b. Within 30 days after the effective date of this Agreed Order:
 - i. Conduct employee training in the inspection of incoming loads to assure they contain less than 10% non-recyclable waste, in accordance with 30 TEX. ADMIN. CODE § 328.4; and

- ii. Begin maintaining records of loads that have been rejected for containing greater than 10% non-recyclable waste, in accordance with TEX. ADMIN. CODE § 328.5.
- c. Within 45 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.b.ii. 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a

written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

4/21/2011

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

MARCH 3, 2011

Date

Matthew J Bowen

Name (Printed or typed)
Authorized Representative of
R2R Recycling, L.L.C.

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.