

CAPTION: Docket No. 2010-1665-AIR-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Newell Recycling Company of El Paso, L.P. in El Paso County; RN100581768; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Trina Grieco, Laurie Eaves)

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-1665-AIR-E **TCEQ ID:** RN100581768 **CASE NO.:** 40521
RESPONDENT NAME: Newell Recycling Company of El Paso, L.P.

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 checked="" 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 type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Newell Recycling, 6800 Market Avenue, El Paso, El Paso County

TYPE OF OPERATION: Semi-precious metal recycling

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: A complaint was received on March 3, 2010, alleging a nuisance condition on the complainant's property. 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 the desire to protest this action.

COMMENTS RECEIVED: The *Texas Register* comment period expired on April 11, 2011. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Trina Grieco, Enforcement Division, Enforcement Team 5, Air Enforcement Section, MC R-13, (210) 403-4006; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
Respondent: Mr. Roberto Lopez, Operations Manager, Newell Recycling Company of El Paso, L.P., 6800 Market Avenue, El Paso, Texas 79915-1014
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 of Complaints Relating to this Case: March 3, 2010</p> <p>Date of Investigation Relating to this Case: September 7, 2010</p> <p>Date of NOV/NOE Relating to this Case: September 30, 2010 (NOE)</p> <p>Background Facts: This was a follow-up to a complaint investigation.</p> <p>AIR</p> <p>1) Failed to maintain the minimum required distance for a stockpile of 100 feet from the nearest off-plant receptor. Specifically, the distance between the stockpile to an adjacent business ranged from 39 feet to 45 feet [30 TEX. ADMIN. CODE § 106.262(a)(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failed to prevent a nuisance condition. Specifically, large amounts of fluff (non-recyclable) material was noted on the property of an adjacent business. Additionally, an employee of that business stated that when the wind is blowing toward the business, the employees cannot work outside (due to the nuisance condition) [30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$2,140</p> <p>Total Deferred: \$428 <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: \$145 (remaining \$1,567 due in 14 monthly payments of \$104 Dollars each and one final payment of \$111)</p> <p>Compliance History Classification: Person/CN – Average Site/RN – Average</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 on October 7, 2010, the Respondent disposed of approximately 20,000 tons of waste material at an authorized landfill in order to meet the minimum distance requirement of 100 feet from the nearest off-plant receptor.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Within 30 days after the effective date of this Agreed Order, implement measures designed to prevent nuisance conditions from the Plant; and</p> <p>b) 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 Provision a.</p>

Additional ID No(s): Air Acct. No. EE0058M



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	4-Oct-2010	Screening	7-Oct-2010	EPA Due	N/A
	PCW	7-Oct-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Newell Recycling Company of El Paso, L.P.
Reg. Ent. Ref. No.	RN100581768
Facility/Site Region	6-El Paso
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	40521	No. of Violations	2	
Docket No.	2010-1665-AIR-E	Order Type	1660	
Media Program(s)	Air	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Trina Grieco	
		EC's Team	Enforcement Team 5	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes Enhancement for two NOV's for same/similar violations and one NOV for dissimilar violations.

Culpability Enhancement **Subtotal 4**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Screening Date 7-Oct-2010

Docket No. 2010-1665-AIR-E

PCW

Respondent Newell Recycling Company of El Paso, L.P.

Policy Revision 2 (September 2002)

Case ID No. 40521

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100581768

Media [Statute] Air

Enf. Coordinator Trina Grieco

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>)	2	10%
	Other written NOVs	1	2%
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) 12%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for two NOVs for same/similar violations and one NOV for dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 12%

Screening Date 7-Oct-2010

Docket No. 2010-1665-AIR-E

PCW

Respondent Newell Recycling Company of El Paso, L.P.

Policy Revision 2 (September 2002)

Case ID No. 40521

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100581768

Media [Statute] Air

Enf. Coordinator Trina Grieco

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 106.262(a)(1) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain the minimum required distance for a stockpile of 100 feet from the nearest off-plant receptor. Specifically, the distance between the stockpile to an adjacent business ranged from 39 feet to 45 feet.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		x		

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

Matrix Notes Human health or the environment could be exposed to significant amounts of contaminants that would not exceed protective levels as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 30 Number of violation days

mark only one with an x	daily		Violation Base Penalty \$1,000
	weekly		
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		

One quarterly event is recommended from the date of the investigation (September 7, 2010) to the compliance date (October 7, 2010).

Good Faith Efforts to Comply

10.0% Reduction \$100

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

Notes The Respondent completed corrective actions by October 7, 2010 (after the September 30, 2010 NOE).

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$14,268 Violation Final Penalty Total \$1,020

This violation Final Assessed Penalty (adjusted for limits) \$1,020

Economic Benefit Worksheet

Respondent Newell Recycling Company of El Paso, L.P.
Case ID No. 40521
Reg. Ent. Reference No. RN100581768
Media Air
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	\$480,000	4-Mar-2010	7-Oct-2010	0.59	\$14,268	n/a	\$14,268
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of the non-recyclable material at an authorized landfill (20,000 tons at \$24/ton). The date required is the date the violation was first documented and the final date is the date corrective actions were completed.

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

\$480,000

TOTAL

\$14,268

Screening Date 7-Oct-2010

Docket No. 2010-1665-AIR-E

PCW

Respondent Newell Recycling Company of El Paso, L.P.

Policy Revision 2 (September 2002)

Case ID No. 40521

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100581768

Media [Statute] Air

Enf. Coordinator Trina Grieco

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to prevent a nuisance condition. Specifically, large amounts of fluff (non-recyclable) material was noted on the property of an adjacent business. Additionally, an employee of that business stated that when the wind is blowing toward the business, the employees cannot work outside (due to the nuisance condition).

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of contaminants that did not exceed protective levels as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

1 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 for the date the nuisance condition was documented (September 7, 2010).

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 \$323

Violation Final Penalty Total \$1,120

This violation Final Assessed Penalty (adjusted for limits) \$1,120

Economic Benefit Worksheet

Respondent Newell Recycling Company of El Paso, L.P.
Case ID No. 40521
Reg. Ent. Reference No. RN100581768
Media Air
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				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	7-Sep-2010	1-May-2011	0.65	\$323	n/a	\$323

Notes for DELAYED costs

Estimated expense to implement measures designed to prevent nuisance conditions from the Plant. The date required is the date the nuisance condition was documented and the final date is the date corrective actions are projected to be completed.

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

\$10,000

TOTAL

\$323

Compliance History Report

Customer/Respondent/Owner-Operator: CN601682057 Newell Recycling Company of El Paso, L.P. Classification: AVERAGE Rating: 2.70

Regulated Entity: RN100581768 NEWELL RECYCLING Classification: AVERAGE Site Rating: 2.70

ID Number(s):

AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EE0058M
AIR NEW SOURCE PERMITS	AFS NUM	4814100028
AIR NEW SOURCE PERMITS	REGISTRATION	56088
AIR NEW SOURCE PERMITS	REGISTRATION	76831
PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	23720
STORMWATER	PERMIT	TXR05N721
AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	EE0058M

Location: 6800 MARKET AVE, EL PASO, TX, 79915

TCEQ Region: REGION 06 - EL PASO

Date Compliance History Prepared: October 05, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 05, 2005 to October 05, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Trina Grieco Phone: (210) 403-4006

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: NO

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.)

1	11/29/2005	(437045)
2	02/13/2006	(452227)
3	03/03/2006	(457022)
4	10/10/2006	(515568)
5	11/07/2007	(600408)
6	12/30/2008	(709642)
7	06/01/2009	(746280)
8	06/24/2009	(748010)
9	01/05/2010	(785972)
10	09/30/2010	(859980)

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

Date: 05/17/2006 (462769)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4
Description: Failure to comply with the Texas Commission on Environmental Quality's (TCEQ) nuisance rule.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter F 101.221(a)
Description: Failure to maintain air pollution abatement equipment in good working condition as required by TCEQ rules and Agreed Order Docket No. 2004-1584-AIR-E.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter A 111.147(1)(A)
Description: Failure to use appropriate methods to control dust on all major in-plant roads and all truck or other heavy-duty vehicle pathways as required by TCEQ rules and regulations.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 106, SubChapter K 106.262(1)
Description: Failure to comply with distance requirements under Permit by Rule §106.262.

Date: 06/26/2009 (748010) CN601682057
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)
Description: Failure to provide acceptable financial assurance.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter B 111.201
30 TAC Chapter 330, SubChapter E 330.209(a)
5C THSC Chapter 382 382.085(b)
Description: Failure to ensure that piles of "fluff" (both processed and unprocessed) are stored in such a manner to not constitute a fire hazard, in accordance with 30 TAC 330.209(a) and 30 TAC 111.201.

Date: 03/26/2010 (795924)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 106, SubChapter K 106.262(a)(3)
5C THSC Chapter 382 382.085(b)
Description: Failure to comply with the Permit by Rule requirements regarding notification using Form PI-7 within ten days following the installation or modification of the facilities in accordance with 30 TAC 106.262 (a) (3).
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 106, SubChapter K 106.262(a)(1)
Description: Failure to comply with the Permit by Rule regarding distance requirements in accordance with 30 TAC 106.262 (a) (1)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4
5C THSC Chapter 382 382.085(b)
Description: Failure to comply with the Texas Commission on Environmental Quality's (TCEQ) nuisance regulation.

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
NEWELL RECYCLING COMPANY
OF EL PASO, L.P.
RN100581768**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-1665-AIR-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 Newell Recycling Company of El Paso, L.P. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 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 semi-precious metal recycling plant at 6800 Market Avenue in El Paso, El Paso County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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 October 5, 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 One Hundred Forty Dollars (\$2,140) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Forty-Five Dollars (\$145) of the administrative penalty and Four Hundred Twenty-Eight Dollars (\$428) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of One Thousand Five Hundred Sixty-Seven Dollars (\$1,567) of the administrative penalty shall be payable in 14 monthly payments of One Hundred Four Dollars (\$104) each and one final payment of \$111. 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 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 on October 7, 2010, the Respondent disposed of approximately 20,000 tons of waste material at an authorized landfill in order to meet the minimum distance requirement of 100 feet from the nearest off-plant receptor.
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 Plant, the Respondent is alleged to have:

1. Failed to maintain the minimum required distance for a stockpile of 100 feet from the nearest off-plant receptor, in violation of 30 TEX. ADMIN. CODE § 106.262(a)(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on September 7, 2010. Specifically, the distance between the stockpile to an adjacent business ranged from 39 feet to 45 feet.
2. Failed to prevent a nuisance condition, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on September 7, 2010. Specifically, large amounts of fluff (non-recyclable) material was noted on the property of an adjacent business. Additionally, an employee of that business stated that when the wind is blowing toward the business, the employees cannot work outside (due to the nuisance condition).

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: Newell Recycling Company of El Paso, L.P., Docket No. 2010-1665-AIR-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, implement measures designed to prevent nuisance conditions from the Plant; and
 - b. 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 No. 2.a. 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:

Supervisor, Environmental Services-Air Quality Program
City of El Paso
7968 San Paulo Drive
El Paso, Texas 79907-1261

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 Plant 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

Date 3/23/2011

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:

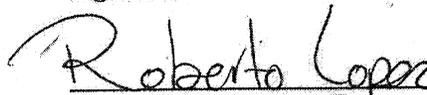
- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement 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

Date 02/03/2011



Name (Printed or typed)
Authorized Representative of
Newell Recycling Company of El Paso, L.P.

Title
Operations Manager

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.