

Executive Summary – Enforcement Matter – Case No. 35702  
Four States Recycling, Inc.  
RN103204954  
Docket No. 2010-1179-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:**

4110 East Amarillo Boulevard, Amarillo, Potter 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:** November 18, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$12,465

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

**Total Paid to General Revenue:** \$520

**Total Due to General Revenue:** \$11,945

Payment Plan: 22 payments of \$520 each plus one payment of \$505

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Poor  
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 23, 2010  
**Date(s) of NOV(s):** April 6, 2010  
**Date(s) of NOE(s):** June 26, 2010

***Violation Information***

1. Failed to prevent the unauthorized disposal of MSW [30 TEX. ADMIN. CODE § 330.15(c) and TCEQ Agreed Order Docket No. 2008-0596-MLM-E, Ordering Provision No. 2.c.].
2. Failed to maintain records to document compliance with 30 TEX. ADMIN. CODE § 328.4 [30 TEX. ADMIN. CODE § 328.5(f) and TCEQ Agreed Order Docket No. 2008-0596-MLM-E, Ordering Provision No. 2.a.ii.].
3. Failed to demonstrate financial assurance for closure, post closure, and corrective action [30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d) and (f)(3), and TCEQ Agreed Order Docket No. 2008-0596-MLM-E, Ordering Provision No. 2.b.iii.].

***Corrective Actions/Technical Requirements***

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

**Technical Requirements:**

1. Within 30 days:
  - a. Cease storing and/or disposing of MSW at the Facility;
  - b. Remove all unauthorized MSW and dispose of it at an authorized facility;
  - c. Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility; and
  - d. Begin maintaining all records.
2. Within 45 days, submit written certification to demonstrate compliance.

***Litigation Information***

**Date Petition(s) Filed:** January 10, 2011; February 2, 2011; September 19, 2011  
**Date Answer(s) Filed:** February 22, 2011  
**SOAH Referral Date:** April 15, 2011  
**Hearing Date(s):**  
Preliminary hearing: June 2, 2011 (waived)  
Evidentiary hearing: September 29, 2011 (continued to October 6, 2011)  
**Settlement Date:** October 3, 2011

***Contact Information***

**TCEQ Attorneys:** Xavier Guerra, Litigation Division, (210) 403-4016  
Lena Roberts, Litigation Division, (512) 239-3400  
**TCEQ Enforcement Coordinator:** Danielle Porrás, Waste Enforcement Section, (713) 767-3682  
**TCEQ Regional Contact:** Eddy Vance, Amarillo Regional Office, (806) 353-9251  
**Respondent:** Ed Pruitt, President, Four States Recycling, Inc., P.O. Box 5908, Amarillo, Texas 79117  
**Respondent's Attorney:** Audie Sciumbato, Underwood Law Firm, P.O. Box 9158, Amarillo, Texas 79105



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	6-Jul-2010	<b>Screening</b>	21-Jul-2010	<b>EPA Due</b>	
	<b>PCW</b>	28-Sep-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Four States Recycling, Inc.
<b>Reg. Ent. Ref. No.</b>	RN103204954
<b>Facility/Site Region</b>	1-Amarillo
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	35702	<b>No. of Violations</b>	3
<b>Docket No.</b>	2010-1179-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>	Danielle Porras
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit 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>	<b>\$9,000</b>
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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>	<b>35.0%</b> Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$3,150</b>
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Notes: Enhancement for one Agreed Order with denial, one Notice of Violation with same/similar violations and poor performance classification.

<b>Culpability</b>	<b>No</b>	<b>0.0%</b> Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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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>	<b>\$0</b>
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$897
Approx. Cost of Compliance	\$5,929

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$12,150</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>2.6%</b>	<b>Adjustment</b>	<b>\$315</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended adjustment to capture the avoided cost associated with violation no. 3.

<b>Final Penalty Amount</b>	<b>\$12,465</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$12,465</b>
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<b>DEFERRAL</b>	<b>0.0%</b> Reduction	<b>Adjustment</b>	<b>\$0</b>
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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>	<b>\$12,465</b>
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**Screening Date** 21-Jul-2010

**Docket No.** 2010-1179-MSW-E

**PCW**

**Respondent** Four States Recycling, Inc.

*Policy Revision 2 (September 2002)*

**Case ID No.** 35702

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN103204954

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Danielle Porras

### 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> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	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)** 25%

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

No

**Adjustment Percentage (Subtotal 3)** 0%

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

Poor Performer

**Adjustment Percentage (Subtotal 7)** 10%

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for one Agreed Order with denial, one Notice of Violation with same/similar violations and poor performance classification.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 35%

Screening Date 21-Jul-2010

Docket No. 2010-1179-MSW-E

PCW

Respondent Four States Recycling, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35702

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103204954

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 330.15(c) and TCEQ Agreed Order Docket No. 2008-0596-MLM-E, Ordering Provisions No. 2.c.

Violation Description Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 250 cubic yards of wooden pallets, railroad ties, metal, plastic and cafeteria waste were disposed of at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			x	10%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 6 Number of violation days 496

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$6,000

Six quarterly events are recommended from the March 12, 2009 effective date of the Agreed Order to the July 21, 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 \$6,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$532

Violation Final Penalty Total \$8,310

This violation Final Assessed Penalty (adjusted for limits) \$8,310

## Economic Benefit Worksheet

**Respondent** Four States Recycling, Inc.  
**Case ID No.** 35702  
**Req. Ent. Reference No.** RN103204954  
**Media** Municipal Solid Waste  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$5,279	12-Mar-2009	17-Mar-2011	2.01	\$532	n/a	\$532
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the MSW and dispose of it at a facility authorized to accept the waste. The Date Required is the effective date of the Agreed Order and the Final Date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,279

**TOTAL**

\$532

Screening Date 21-Jul-2010

Docket No. 2010-1179-MSW-E

PCW

Respondent Four States Recycling, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35702

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103204954

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 328.5(f) and TCEQ Agreed Order Docket No. 2008-0596-MLM-E, Ordering Provisions No. 2.a.ii.

Violation Description Failed to maintain all records to document compliance at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 496 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an 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 \$50

Violation Final Penalty Total \$1,385

This violation Final Assessed Penalty (adjusted for limits) \$1,385

## Economic Benefit Worksheet

**Respondent** Four States Recycling, Inc.  
**Case ID No.** 35702  
**Req. Ent. Reference No.** RN103204954  
**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	\$500	12-Mar-2009	17-Mar-2011	2.01	\$50	n/a	\$50
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 of compliance at the Facility. The Date Required is the effective date of the Agreed Order and the Final Date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$50

Screening Date 21-Jul-2010

Docket No. 2010-1179-MSW-E

PCW

Respondent Four States Recycling, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35702

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103204954

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 37.921, 328.5(d), and 328.5(f)(3) and TCEQ Agreed Order Docket No. 2008-0596-MLM-E, Ordering Provisions No. 2.b.iii.

Violation Description Failed to demonstrate financial assurance for closure, post closure, and corrective action.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 496 Number of violation days

mark only one with an x	daily		Violation Base Penalty \$2,000
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual	x	
	single event		

Two annual events are recommended from the March 12, 2009 effective date of the Agreed Order to the July 21, 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 \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$315 Violation Final Penalty Total \$2,770

This violation Final Assessed Penalty (adjusted for limits) \$2,770

## Economic Benefit Worksheet

**Respondent** Four States Recycling, Inc.  
**Case ID No.** 35702  
**Req. Ent. Reference No.** RN103204954  
**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]	\$150	12-Mar-2009	23-Jun-2010	2.00	\$15	\$300	\$315
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for financial assurance. The Date Required is the effective date of the Agreed Order and the Final Date is the investigation date.

Approx. Cost of Compliance

\$150

**TOTAL**

\$315

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN603318312	Four States Recycling, Inc.	Classification: Poor	Rating: 295.00
Regulated Entity:	RN103204954	Four States Recycling, Inc.	Classification: Poor	Site Rating: 295.00
ID Number(s):	STORMWATER	PERMIT	TXR05W383	
	STORMWATER	PERMIT	TXR05X562	
Location:	4110 E AMARILLO BLVD, AMARILLO, TX, 79107			
TCEQ Region:	REGION 01 - AMARILLO			
Date Compliance History Prepared:	July 21, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 21, 2005 to July 21, 2010			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	<u>Danielle Porras</u>	Phone:	<u>(713) 767-3682</u>	

## 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: 9/1/2009 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.

**Effective Date: 03/12/2009**

**ADMINORDER 2008-0596-MLM-E**

Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter A 328.5(b)  
30 TAC Chapter 335, SubChapter A 335.6(a)

Description: Failed to notify the Executive Director of recycling operations for materials generated at municipal and industrial facilities, and failed to report to the Executive Director prior to the commencement of new recycling operations.

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)

Description: Failed to dispose of solid waste at an authorized facility. Specifically, multiple piles of MSW, including wooden pallets, railroad ties, metal, plastic and cafeteria waste including styrofoam were observed on-site, totaling approximately 250 cubic yards.

Classification: Moderate

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

Description: Failure to maintain records required to comply with 30 TAC 328.4.

Classification: Major

Citation: 30 TAC Chapter 328, SubChapter A 328.5(d)  
30 TAC Chapter 328, SubChapter A 328.5(f)(3)  
30 TAC Chapter 37, SubChapter J 37.921

Description: Failed to obtain financial assurance for closure of the Facility.

Classification: Moderate

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

Description: Failure to maintain a fire prevention and suppression plan as required by 30 TAC 328.5(h).

- 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 04/07/2010 (788489)

2 07/01/2010 (829150)

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

**Date: 04/06/2010 (788489)**

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter A 328.5(b)  
30 TAC Chapter 335, SubChapter A 335.6(a)

Description: Failed to notify the Executive Director of recycling operations for materials generated at municipal and industrial facilities, and failed to report to the Executive Director prior to the commencement of new recycling operations.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)

Description: Failed to dispose of solid waste at an authorized facility. Specifically, multiple piles of MSW, including wooden pallets, railroad ties, metal, plastic and cafeteria waste including styrofoam were observed on-site, totaling approximately 250 cubic yards.

Self Report? NO Classification: Moderate

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

Description: Failure to maintain records required to comply with 30 TAC 328.4.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 328, SubChapter A 328.5(d)

30 TAC Chapter 328, SubChapter A 328.5(f)(3)

30 TAC Chapter 37, SubChapter J 37.921

Description: Failed to obtain financial assurance for closure of the Facility.

Self Report? NO Classification: Moderate

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

Description: Failure to maintain a fire prevention and suppression plan as required by 30 TAC 328.5(h).

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  
FOUR STATES RECYCLING, INC.;  
RN103204954**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2010-1179-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 Four States Recycling, Inc. ("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, represented by Audie Sciumbato of the law firm Underwood, Wilson, Berry, Stein & Johnson, P.C., presented this Agreed Order to the Commission.

Respondent understands that it 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 4110 East Amarillo Boulevard in Amarillo, Potter County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on June 23, 2010, a TCEQ Amarillo Regional Office investigator documented that Respondent:
  - a. Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 250 cubic yards of wooden pallets, railroad ties, metal, plastic and cafeteria waste were disposed of at the Facility;

- b. Failed to maintain records to document compliance with 30 TEX. ADMIN. CODE § 328.4; and
  - c. Failed to demonstrate financial assurance for closure, post closure, and corrective action.
3. Respondent received notice of the violations on or about July 1, 2010.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant 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 prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c) and TCEQ Agreed Order Docket No. 2008-0596-MLM-E, Ordering Provision No. 2.c.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to maintain records to document compliance with 30 TEX. ADMIN. CODE § 328.4, in violation of 30 TEX. ADMIN. CODE § 328.5(f) and TCEQ Agreed Order Docket No. 2008-0596-MLM-E, Ordering Provision No. 2.a.ii.
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to demonstrate financial assurance for closure, post closure, and corrective action, in violation of 30 TEX. ADMIN. CODE §§ 37.921, 328.5(d), and 328.5(f)(3), and TCEQ Agreed Order Docket No. 2008-0596-MLM-E, Ordering Provision No. 2.b.iii.
5. 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.
6. An administrative penalty in the amount of twelve thousand four hundred sixty-five dollars (\$12,465.00) 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 five hundred twenty dollars (\$520.00) of the administrative penalty. The remaining amount of eleven thousand nine hundred forty-five dollars (\$11,945.00) of the administrative penalty shall be payable in twenty-two (22) monthly payments of five hundred twenty dollars (\$520.00) each, followed by one final payment of five hundred five dollars (\$505.00). 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. 6, 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: Four States Recycling, Inc., Docket No. 2010-1179-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. Cease storing and/or disposing of MSW at the Facility;
    - ii. Remove all unauthorized MSW and dispose of it at an authorized facility;
    - iii. Submit documentation that demonstrates acceptable financial assurance for the closure of the Facility, in accordance with 30 Tex. Admin. Code §§ 37.921, 328.5(d) and 328.5(f)(3) to:

Financial Assurance Team, MC 184  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087
    - iv. Begin maintaining all records, in accordance with 30 TEX. ADMIN. CODE § 328.5(f).
  - b. 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.c., below, to demonstrate compliance with Ordering Provision No. 2.a.
  - c. The certification 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:

Eddy Vance, Waste Section Manager  
Texas Commission on Environmental Quality  
Amarillo Regional Office  
3918 Canyon Drive  
Amarillo, Texas 79109-4933

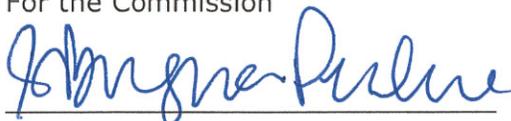
3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations 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

12/5/2011

\_\_\_\_\_  
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 Four States Recycling, Inc., 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.

\_\_\_\_\_  
Signature



\_\_\_\_\_  
Name (Printed or typed)  
Authorized representative of  
Four States Recycling, Inc.

10-3-2011  
Date

\_\_\_\_\_  
Title

E/m