

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 34430  
Effluent Recycling, Inc. and Michael W. Martin  
RN101569879  
Docket No. 2011-1973-MLM-E

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

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

**Media:**

MLM - IHW, PST, Used Oil

**Small Business:**

Yes

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

1010 Benjamin Street, Fort Worth, Tarrant County

**Type of Operation:**

industrial hazardous waste generation, storage, and disposal facility with an underground storage tank ("UST") system

**Other Significant Matters:**

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: On or about October 27, 2010, Respondent Michael W. Martin filed a petition for bankruptcy relief pursuant to Chapter 13 of the United States Code. The undeferred administrative penalty in this matter is assessed only against Respondent Effluent Recycling, Inc.

Interested Third-Parties: None

**Texas Register Publication Date:** April 26, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$421,963

**Deferred for Financial Inability to Pay:** \$420,763

**Total Paid to General Revenue:** \$100

**Total Due to General Revenue:** \$1,100

Payment Plan: 11 payments of \$100 each

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Poor (Effluent Recycling, Inc.); Unclassified (Michael W. Martin)

Site/RN – Poor (Effluent Recycling, Inc.); N/A (Michael W. Martin)

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2002 (PCW 2 and 3);  
September 2011 (PCW 1)

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** June 16, 2011  
**Date(s) of NOV(s):** July 12, 2010  
**Date(s) of NOE(s):** September 20, 2011

**Violation Information**

1. Failed to either permanently remove an existing UST from service or bring the UST into timely compliance with upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2) and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.d.].
2. Failed to prevent the discharge of wastes from tanks and containers to surface soils [30 TEX. ADMIN. CODE §§ 335.2(a) and (b) and 335.4, and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provisions Nos. 2.a.i. and 2.e.].
3. Failed to limit storage of hazardous waste at the Facility to 90 days or less [30 TEX. ADMIN. CODE § 335.69(a)(1)(B), 40 C.F.R. § 265.190, and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.a.iii.].
4. Failed to conduct an appropriate hazardous waste determinations on wastes generated at the Facility [30 TEX. ADMIN. CODE § 335.62, 40 C.F.R. § 262.11, and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.b.ii.].
5. Failed to obtain authorization prior to storing hazardous waste [30 TEX. ADMIN. CODE §§ 335.2(a) and (b) and 335.43(a), and 40 C.F.R. § 270.1(c)].
6. Failed to provide a written assessment reviewed and certified by an independent, qualified, registered professional engineer attesting that the storage tank and tank system at the Facility has sufficient structural integrity and was acceptable for the storing and treating of hazardous waste [30 TEX. ADMIN. CODE § 335.112(a)(9), 40 C.F.R. § 265.192, and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.b.iv.].
7. Failed to install and maintain secondary containment designed to prevent any migration of wastes or accumulated liquids out of the storage tank at the Facility and into the soil, groundwater, or surface water during the use of the tank system [30 TEX. ADMIN. CODE § 335.112(a)(9), 40 C.F.R. § 265.193, and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.b.i.].
8. Failed to provide documentation for inspections conducted on the storage tank system at the Facility [30 TEX. ADMIN. CODE § 335.112(a)(9), 40 C.F.R. § 265.195, and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.a.ii.].
9. Failed to make notifications of reportable discharges or spills into the environment within twenty-four hours [30 TEX. ADMIN. CODE §§ 327.3(b) and 327.5(c), and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.b.v.].
10. Failed to close hazardous waste containers, except when necessary to add or remove waste, and failed to locate containers holding ignitable waste at least fifty feet from the Facility's property line [30 TEX. ADMIN. CODE § 335.112(a)(8), 40 C.F.R. §§ 265.173 and 265.176, and Agreed Order, Ordering Provision No. 2.b.iii.].
11. Failed to register with the Commission prior to transporting and storing used oil [30 TEX. ADMIN. CODE §§ 324.11(2) and 324.4(2)(C)(i), and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.c.].
12. Failed to establish and maintain financial assurance for soil remediation at the Facility [30 TEX. ADMIN. CODE §§ 37.2011 and 324.22(b), (c) and (e), and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.c.ii.].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

The Facility is no longer in operation. As of January 29, 2013, the EPA removed the UST and all waste from the Facility.

**Technical Requirements:**

1. Within 90 days, submit to the Executive Director for approval an Affected Property Assessment Report ("APAR"), and, if response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program ("TRRP") which may include: plans, reports, and notices; financial assurance; and Institutional Controls.
2. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the APAR within 30 days of such requests or by any other deadline specified in writing by the TCEQ.
3. Within 105 days, submit written certification to demonstrate compliance.

**Litigation Information**

**Date Petition(s) Filed:** April 18, 2012; June 13, 2012  
**Date Answer(s) Filed:** May 18, 2012; July 2, 2012  
**SOAH Referral Date:** July 5, 2012  
**Hearing Date(s):**  
Preliminary Hearing: August 16, 2012  
Evidentiary Hearing: April 2, 2013 (scheduled)  
**Settlement Date:** March 27, 2013

**Contact Information**

**TCEQ Attorneys:** Jennifer Cook, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Eli Martinez, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Clinton Sims, Enforcement Division, (512) 239-6933  
**TCEQ Regional Contact:** Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5800  
**Respondent Contact:** Michael Martin, President, Effluent Recycling, Inc., 600 Knight Bridge Road, Weatherford, Texas 76087  
**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	<b>Assigned</b>	20-Oct-2011	<b>Screening</b>	18-Oct-2011	<b>EPA Due</b>	
	<b>PCW</b>	15-Nov-2011				

**RESPONDENT/FACILITY INFORMATION**

<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.		
<b>Reg. Ent. Ref. No.</b>	RN101569879		
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor

**CASE INFORMATION**

<b>Enf./Case ID No.</b>	34430	<b>No. of Violations</b>	4
<b>Docket No.</b>	2011-1973-MLM-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Industrial and Hazardous Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Clinton Sims
		<b>EC's Team</b>	Enforcement Team 6
<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>	\$207,500
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**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

<b>Compliance History</b>	60.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$124,500
<b>Notes</b>	Enhancement for one NOV with same/similar violations, one order containing a denial of liability, repeat violator, and poor performer classification.		
<b>Culpability</b>	No 0.0% Enhancement	<b>Subtotal 4</b>	\$0
<b>Notes</b>	The Respondent does not meet the culpability criteria.		
<b>Good Faith Effort to Comply Total Adjustments</b>		<b>Subtotal 5</b>	\$0
<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$10,506	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$66,000		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$332,000
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
	<b>Final Penalty Amount</b> \$332,000

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$332,000
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	No deferral is recommended for Findings Orders.
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<b>PAYABLE PENALTY</b>	\$332,000
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<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.			Policy Revision 2 (September 2002)
<b>Case ID No.</b>	34430			PCW Revision October 30, 2008
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Industrial and Hazardous Waste			
<b>Enf. Coordinator</b>	Clinton Sims			

### 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)**

Yes

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

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

Poor Performer

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

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with same/similar violations , one order containing a denial of liability, repeat violator, and poor performer classification.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 60%

<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.		Policy Revision 2 (September 2002)	
<b>Case ID No.</b>	34430	PCW Revision October 30, 2008		
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Industrial and Hazardous Waste			
<b>Enf. Coordinator</b>	Clinton Sims			

**Violation Number**

**Rule Cite(s)** TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.d. and 30 Tex. Admin. Code § 334.47(a)(2)

**Violation Description** Failed to permanently remove an existing underground storage tank ("UST") system from service or bring the tank system into timely compliance with upgrade requirements. Specifically, the Respondent failed to remove or bring into compliance a registered, out-of-service UST at the Facility.

**Base Penalty**

>> Environmental, Property and Human Health Matrix

<b>OR</b>	<b>Harm</b>			<b>Percent</b> <input type="text" value="25%"/>	
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	<b>Percent</b> <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**Matrix Notes** Human health or the environment will or could be exposed to pollutants which would 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

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

Twenty-Seven monthly events are recommended from the July 20, 2009 order effective date to the October 18, 2011 screening date.

Good Faith Efforts to Comply

Reduction

		Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(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** Michael Martin and Effluent Recycling, Inc.  
**Case ID No.** 34430  
**Reg. Ent. Reference No.** RN101569879  
**Media Violation No.** Industrial and Hazardous Waste  
 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	\$10,000	20-Jul-2009	24-Sep-2012	3.18	\$1,592	n/a	\$1,592
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to bring the existing UST into compliance or completely remove it from the Facility. The Date Required is the order effective date and the Final Date is the expected compliance date.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$10,000

**TOTAL** \$1,592

<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	34430			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Industrial and Hazardous Waste			
<b>Enf. Coordinator</b>	Clinton Sims			
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provisions Nos. 2.a.i. and 2.e., and 30 Tex. Admin. Code § 335.4 and 335.2(a) and (b)			
<b>Violation Description</b>	Failed to prevent the discharge of wastes from tanks and containers to surface soils. Specifically, discharges of waste, petroleum products and/or absorbents were observed at the Facility, no Affected Property Assessment Report has been received by the TCEQ, and response actions required by the Texas Risk Reduction Program have not been taken.			
		<b>Base Penalty</b>	\$10,000	

>> Environmental, Property and Human Health Matrix

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual		x		<b>Percent</b> 25%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	<b>Percent</b> 0%

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

**Adjustment** \$7,500

\$2,500

Violation Events

Number of Violation Events: 27      819 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

**Violation Base Penalty** \$67,500

Twenty-Seven monthly events are recommended from the July 20, 2009 order effective date to the October 18, 2011 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** \$67,500

Economic Benefit (EB) for this violation      Statutory Limit Test

Estimated EB Amount \$7,959      Violation Final Penalty Total \$108,000

**This violation Final Assessed Penalty (adjusted for limits)** \$108,000

## Economic Benefit Worksheet

**Respondent** Michael Martin and Effluent Recycling, Inc.  
**Case ID No.** 34430  
**Reg. Ent. Reference No.** RN101569879  
**Media Violation No.** Industrial and Hazardous Waste  
 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	\$50,000	20-Jul-2009	24-Sep-2012	3.18	\$7,959	n/a	\$7,959
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 contaminated soil at an authorized facility, based on \$100/cubic yard and approximately 500 cubic yards of contaminated soil. The Date Required is the order effective date and the Final Date is the expected compliance date.

**Avoided Costs**

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

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

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$50,000

**TOTAL** \$7,959

<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	34430			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Industrial and Hazardous Waste			
<b>Enf. Coordinator</b>	Clinton Sims			

**Violation Number**

**Rule Cite(s)** TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.a.iii., 30 Tex. Admin. Code § 335.69(a)(1)(B), 40 Code of Federal Regulations ("CFR") § 265.190

**Violation Description**

Failed to limit storage of hazardous waste to 90 days or less. Specifically, samples of the wastes collected indicated hazardous waste and had been stored for over 90 days and not removed.

**Base Penalty**

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

<b>OR</b>	<b>Harm</b>				<b>Percent</b> <input type="text" value="25%"/>
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

<b>Matrix Notes</b>	<b>Falsification</b>	Major	Moderate	Minor	<b>Percent</b> <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.					

**Adjustment**

**Violation Events**

Number of Violation Events	<input type="text" value="27"/>	<input type="text" value="819"/>	Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$67,500"/>
	weekly	<input type="text"/>	
	monthly	<input type="text" value="x"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
single event	<input type="text"/>		

Twenty-Seven monthly events are recommended from the July 20, 2009 order effective date to the October 18, 2011 screening date.

**Good Faith Efforts to Comply**

Reduction

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

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

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Estimated EB Amount**

**Statutory Limit Test**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Michael Martin and Effluent Recycling, Inc.  
**Case ID No.** 34430  
**Reg. Ent. Reference No.** RN101569879  
**Media Violation No.** Industrial and Hazardous Waste  
 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	\$5,000	20-Jul-2009	24-Sep-2012	3.18	\$796	n/a	\$796
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs** Estimated cost to develop and implement procedures to ensure compliance with 90-day accumulation time limit for storing hazardous waste. The Date Required is the order effective date and the Final Date is the expected compliance date.

### Avoided Costs

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

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

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$5,000

**TOTAL** \$796

<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.		Policy Revision 2 (September 2002)	
<b>Case ID No.</b>	34430			PCW Revision October 30, 2008
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Industrial and Hazardous Waste			
<b>Enf. Coordinator</b>	Clinton Sims			
<b>Violation Number</b>	4			
<b>Rule Cite(s)</b>	TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.b.ii. and 30 Tex. Admin. Code § 335.62 and 40 CFR § 262.11			
<b>Violation Description</b>	Failed to conduct an appropriate hazardous waste determination on wastes generated at the Facility. Specifically, there had been no hazardous waste determination for waste at the Facility.			
<b>Base Penalty</b>				\$10,000

>> Environmental, Property and Human Health Matrix

<b>OR</b>	<b>Harm</b>			<b>Percent</b>
	Major	Moderate	Minor	
	Actual			
Potential	x			25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	<b>Percent</b>
					0%

Matrix Notes: Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** \$7,500

\$2,500

Violation Events

Number of Violation Events: 2      819 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$5,000

Two single events are 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** \$5,000

Economic Benefit (EB) for this violation      Statutory Limit Test

Estimated EB Amount \$159      Violation Final Penalty Total \$8,000

**This violation Final Assessed Penalty (adjusted for limits)** \$8,000

# Economic Benefit Worksheet

**Respondent** Michael Martin and Effluent Recycling, Inc.  
**Case ID No.** 34430  
**Reg. Ent. Reference No.** RN101569879  
**Media Violation No.** Industrial and Hazardous Waste 4

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	20-Jul-2009	24-Sep-2012	3.18	\$159	n/a	\$159

**Notes for DELAYED costs**  
 Estimated cost to conduct a hazardous waste determination. The Date Required is the order effective date and the Final Date is the expected compliance date.

### Avoided Costs

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

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

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**  **TOTAL**



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	10-Oct-2011			
	<b>PCW</b>	15-Nov-2011	<b>Screening</b>	18-Oct-2011	<b>EPA Due</b>

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.			
<b>Reg. Ent. Ref. No.</b>	RN101569879			
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor	

## CASE INFORMATION

<b>Enf./Case ID No.</b>	34430	<b>No. of Violations</b>	6
<b>Docket No.</b>	2011-1973-MLM-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Industrial and Hazardous Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Used Oil	<b>Enf. Coordinator</b>	Clinton Sims
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$48,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** **60.0%** Enhancement **Subtotals 2, 3, & 7** \$28,800

Notes: Enhancement for one NOV with same/similar violations, one order containing a denial of liability, repeat violator, and poor performer classification.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** \$0

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$0

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

Total EB Amounts \$1,648  
Approx. Cost of Compliance \$9,300  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$76,800

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.3%** **Adjustment** \$241

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 5.

**Final Penalty Amount** \$77,041

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$77,041

**DEFERRAL** **0.0%** Reduction **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** \$77,041

Screening Date 18-Oct-2011

Docket No. 2011-1973-MLM-E

PCW

Respondent Michael Martin and Effluent Recycling, Inc.

Policy Revision 2 (September 2002)

Case ID No. 34430

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101569879

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Clinton Sims

## Compliance History Worksheet

## &gt;&gt; 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%

## &gt;&gt; Repeat Violator (Subtotal 3)

Yes

Adjustment Percentage (Subtotal 3) 25%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

## &gt;&gt; Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations, one order containing a denial of liability, repeat violator, and poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 60%

<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.		Policy Revision 2 (September 2002)	
<b>Case ID No.</b>	34430	PCW Revision October 30, 2008		
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Industrial and Hazardous Waste			
<b>Enf. Coordinator</b>	Clinton Sims			

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

>> Environmental, Property and Human Health Matrix

<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				<b>Percent</b> <input type="text" value="0%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>
<b>Matrix Notes</b>	<input type="text" value="100% of the rule requirement was not met."/>				

**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 checked="" type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

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

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Michael Martin and Effluent Recycling, Inc.  
**Case ID No.** 34430  
**Reg. Ent. Reference No.** RN101569879  
**Media Violation No.** Industrial and Hazardous Waste  
 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,500	21-Jul-2009	24-Sep-2012	3.18	\$398	n/a	\$398
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a permit for storing hazardous waste. The Date Required is the order effective date and the Final Date is the expected compliance date.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,500

**TOTAL**

\$398

<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	34430			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Industrial and Hazardous Waste			
<b>Enf. Coordinator</b>	Clinton Sims			

**Violation Number**

**Rule Cite(s)** TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.b.iv., 30 Tex. Admin. Code § 335.112(a)(9) and 40 CFR § 265.192

**Violation Description** Failed to provide written assessment that was reviewed and certified by an independent, qualified, registered professional engineer attesting that the tank and tank system had sufficient structural integrity and was acceptable for the storing and treating of hazardous waste. Specifically, Respondents have not provided any written assessments for an on-site storage tank.

**Base Penalty**

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

<b>OR</b>	<b>Harm</b>			<b>Percent</b> <input type="text" value="0%"/>	
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

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

Matrix Notes

100% of the rule requirement was not met.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text" value="x"/>

**Violation Base Penalty**

One single event is recommended.

**Good Faith Efforts to Comply**

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(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** Michael Martin and Effluent Recycling, Inc.  
**Case ID No.** 34430  
**Reg. Ent. Reference No.** RN101569879  
**Media Violation No.** Industrial and Hazardous Waste  
 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)	\$1,500	20-Jul-2009	24-Sep-2012	3.18	\$239	n/a	\$239

**Notes for DELAYED costs**  
 Estimated cost to provide written assessment that is reviewed and certified by an independent, qualified registered professional engineer. The Date Required is the order effective date and the Final Date is the expected compliance date.

**Avoided Costs**

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

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

**Notes for AVOIDED costs**

<b>Approx. Cost of Compliance</b>	\$1,500	<b>TOTAL</b>	\$239
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<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	34430			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Industrial and Hazardous Waste			
<b>Enf. Coordinator</b>	Clinton Sims			
<b>Violation Number</b>	3			
<b>Rule Cite(s)</b>	TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.b.i., 30 Tex. Admin. Code § 335.112(a)(9) and 40 CFR § 265.193			
<b>Violation Description</b>	Failed to install and maintain secondary containment which is designed to prevent any migration of wastes or accumulated liquids out of the system into the soil, groundwater, or surface water at any time during the use of the tank system. Specifically, there was no secondary containment for an on-site storage tank.			
		<b>Base Penalty</b>	\$10,000	

>> Environmental, Property and Human Health Matrix

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual				<b>Percent</b> 10%
Potential		x			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 0%

Matrix Notes: Human health or the environment will or could be exposed to significant amounts of pollutants which would 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: 9      819 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$9,000

Nine quarterly events are recommended from the July 20, 2009 order effective date to the October 18, 2011 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** \$9,000

Economic Benefit (EB) for this violation      **Statutory Limit Test**

Estimated EB Amount \$478      Violation Final Penalty Total \$14,445

**This violation Final Assessed Penalty (adjusted for limits)** \$14,445

## Economic Benefit Worksheet

**Respondent** Michael Martin and Effluent Recycling, Inc.  
**Case ID No.** 34430  
**Reg. Ent. Reference No.** RN101569879  
**Media Violation No.** Industrial and Hazardous Waste  
 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)	\$3,000	20-Jul-2009	24-Sep-2012	3.18	\$478	n/a	\$478

**Notes for DELAYED costs**  
 Estimated cost to provide secondary containment. The Date Required is the order effective date and the Final Date is the expected compliance date.

### Avoided Costs

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

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

**Notes for AVOIDED costs**

<b>Approx. Cost of Compliance</b>	\$3,000	<b>TOTAL</b>	\$478
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<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	34430			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Industrial and Hazardous Waste			
<b>Enf. Coordinator</b>	Clinton Sims			
<b>Violation Number</b>	4			
<b>Rule Cite(s)</b>	TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.a.ii., 30 Tex. Admin. Code § 335.112(a)(9) and 40 CFR § 265.195			
<b>Violation Description</b>	Failed to provide documentation for inspections conducted on the tank system. Specifically, there was no documentation to indicate that the Respondent conducted any inspections of an on-site storage tank.			
		<b>Base Penalty</b>		\$10,000

>> Environmental, Property and Human Health Matrix

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual				<b>Percent</b> 0%
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			<b>Percent</b> 10%

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

**Adjustment** \$9,000

\$1,000

Violation Events

Number of Violation Events: 1      819 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,000

One single event is recommended.

Good Faith Efforts to Comply      **0.0%** Reduction      \$0

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

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

**Violation Subtotal** \$1,000

Economic Benefit (EB) for this violation      **Statutory Limit Test**

Estimated EB Amount \$16      **Violation Final Penalty Total** \$1,605

**This violation Final Assessed Penalty (adjusted for limits)** \$1,605

## Economic Benefit Worksheet

**Respondent** Michael Martin and Effluent Recycling, Inc.  
**Case ID No.** 34430  
**Reg. Ent. Reference No.** RN101569879  
**Media Violation No.** Industrial and Hazardous Waste  
 4

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	20-Jul-2009	24-Sep-2012	3.18	\$16	n/a	\$16

Notes for DELAYED costs

Estimated cost to begin maintaining documentation for inspections on the tank system. The Date Required is the order effective date and the Final Date is the expected compliance date.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

**TOTAL**

\$16

<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	34430			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Industrial and Hazardous Waste			
<b>Enf. Coordinator</b>	Clinton Sims			

**Violation Number**

**Rule Cite(s)** TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.b.v., 30 Tex. Admin. Code §§ 327.3(b) and 327.5(c)

**Violation Description**

Failed to make notifications of reportable discharges or spills into the environment within twenty-four hours. Specifically, during the time-frame of 2001-2011, TCEQ investigators have observed a pattern of repeated discharges at the Facility. However, the TCEQ has no records of any notifications of reportable discharges or spills submitted by the Respondent.

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

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

Matrix Notes

100% of the rule requirement was not met.

**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"/>	(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** Michael Martin and Effluent Recycling, Inc.  
**Case ID No.** 34430  
**Reg. Ent. Reference No.** RN101569879  
**Media Violation No.** Industrial and Hazardous Waste  
 5

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]				0.00	\$0	\$0	\$0
<b>ONE-TIME avoided costs [3]</b>	<b>\$200</b>	<b>20-Jul-2009</b>	<b>20-Jul-2009</b>	0.00	\$0	\$200	\$200
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to report discharges or spills within 24 hours to the TCEQ. The Date Required is the order effective date and the Final Date is the expected compliance date.

Approx. Cost of Compliance \$200

**TOTAL** \$200

<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.		Policy Revision 2 (September 2002)	
<b>Case ID No.</b>	34430	PCW Revision October 30, 2008		
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Industrial and Hazardous Waste			
<b>Enf. Coordinator</b>	Clinton Sims			

**Violation Number**

**Rule Cite(s)** TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.b.iii., 30 Tex. Admin. Code § 335.112(a)(8) and 40 CFR §§ 265.173 and 265.176

**Violation Description** Failed to close hazardous waste containers, except when necessary to add or remove waste and failing to maintain containers holding ignitable waste at least fifty feet from the Facility's property line. Specifically, containers were not properly closed and did not have seals for any type of closure, as required. Additionally, containers were less than fifty feet from the property line.

**Base Penalty**

>> Environmental, Property and Human Health Matrix

<b>OR</b>	<b>Harm</b>			<b>Percent</b> <input type="text" value="10%"/>	
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	x	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	<b>Percent</b> <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

Human health or the environment will or could be exposed to significant 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

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	x
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

Nine quarterly events are recommended from the July 20, 2009 order effective date to the October 18, 2011 screening date.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(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** Michael Martin and Effluent Recycling, Inc.  
**Case ID No.** 34430  
**Reg. Ent. Reference No.** RN101569879  
**Media Violation No.** Industrial and Hazardous Waste  
 6

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)	\$2,000	20-Jul-2009	24-Sep-2012	3.18	\$318	n/a	\$318

**Notes for DELAYED costs**

Estimated cost to keep the hazardous waste containers closed. The Date Required is the order effective date and the Final Date is the expected compliance date.

**Avoided Costs**

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

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

**Notes for AVOIDED costs**

<b>Approx. Cost of Compliance</b>	\$2,000	<b>TOTAL</b>	\$318
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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	20-Oct-2012			
	<b>PCW</b>	15-Nov-2011	<b>Screening</b>	18-Oct-2011	<b>EPA Due</b>

**RESPONDENT/FACILITY INFORMATION**

<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.			
<b>Reg. Ent. Ref. No.</b>	RN101569879			
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor	

**CASE INFORMATION**

<b>Enf./Case ID No.</b>	34430	<b>No. of Violations</b>	2
<b>Docket No.</b>	2011-1973-MLM-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Used Oil	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Industrial and Hazardous Waste	<b>Enf. Coordinator</b>	Clinton Sims
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$2,500

**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.

<b>Compliance History</b>	60.0%	Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<input type="text" value="\$4,200"/>
Notes	Enhancement for one NOV with same/similar violations, one order containing a denial of liability, repeat violator, and poor performer classification.			
<b>Culpability</b>	No	0.0%	Enhancement	<b>Subtotal 4</b> <input type="text" value="\$0"/>
Notes	The Respondent does not meet the culpability criteria.			
<b>Good Faith Effort to Comply Total Adjustments</b>			<b>Subtotal 5</b>	<input type="text" value="\$0"/>
<b>Economic Benefit</b>	0.0%	Enhancement*	<b>Subtotal 6</b>	<input type="text" value="\$0"/>
Total EB Amounts	<input type="text" value="\$1,802"/>	*Capped at the Total EB \$ Amount		
Approx. Cost of Compliance	<input type="text" value="\$910"/>			

**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	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.			
			<b>Final Penalty Amount</b>	<input type="text" value="\$12,922"/>

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  **Reduction** **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	No deferral is recommended for Findings Orders.			
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**PAYABLE PENALTY**

<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.			Policy Revision 2 (September 2002)
<b>Case ID No.</b>	34430			PCW Revision October 30, 2008
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Used Oil			
<b>Enf. Coordinator</b>	Clinton Sims			

### 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)**

Yes

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

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

Poor Performer

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

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with same/similar violations, one order containing a denial of liability, repeat violator, and poor performer classification.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 60%

<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.		<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b>	34430	<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Used Oil			
<b>Enf. Coordinator</b>	Clinton Sims			

**Violation Number**

**Rule Cite(s)** TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.c., 30 Tex. Admin. Code §§ 324.11(2) and 324.4(2)(C)(i)

**Violation Description** Failed to have registration for transporting and storing used oil. Specifically, 55-gallon drums containing used oil had been stored on site for approximately three calendar years.

**Base Penalty**

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

<b>OR</b>	<b>Harm</b>			<b>Percent</b> <input type="text" value="0%"/>	
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

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

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input checked="" type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**

Reduction

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

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

# Economic Benefit Worksheet

**Respondent** Michael Martin and Effluent Recycling, Inc.  
**Case ID No.** 34430  
**Reg. Ent. Reference No.** RN101569879  
**Media Violation No.** Used Oil  
 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment			0.00	\$0	\$0	\$0	
Buildings			0.00	\$0	\$0	\$0	
Other (as needed)			0.00	\$0	\$0	\$0	
Engineering/construction			0.00	\$0	\$0	\$0	
Land			0.00	\$0	n/a	\$0	
Record Keeping System			0.00	\$0	n/a	\$0	
Training/Sampling			0.00	\$0	n/a	\$0	
Remediation/Disposal			0.00	\$0	n/a	\$0	
Permit Costs	\$500	20-Jul-2009	24-Sep-2012	3.18	\$80	n/a	\$80
Other (as needed)			0.00	\$0	n/a	\$0	

**Notes for DELAYED costs**   Estimated cost to obtain proper registration. The Date Required is the order effective date and the Final Date is the expected compliance date.

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

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

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**      **TOTAL**

<b>Screening Date</b>	18-Oct-2011	<b>Docket No.</b>	2011-1973-MLM-E	<b>PCW</b>
<b>Respondent</b>	Michael Martin and Effluent Recycling, Inc.			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	34430			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN101569879			
<b>Media [Statute]</b>	Used Oil			
<b>Enf. Coordinator</b>	Clinton Sims			
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.c.ii., 30 Tex. Admin. Code §§ 37.2011 and 324.22(b),(c), and (e)			
<b>Violation Description</b>	Failed to establish and maintain financial assurance for soil remediation.			
		<b>Base Penalty</b>	\$2,500	

>> Environmental, Property and Human Health Matrix

<b>OR</b>	<b>Harm</b>			
	Major	Moderate	Minor	
	Actual	Potential		<b>Percent</b> <input type="text" value="0%"/>

>> Programmatic Matrix

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

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

**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	x

**Violation Base Penalty**

One single event is recommended.

Good Faith Efforts to Comply  Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(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** Michael Martin and Effluent Recycling, Inc.  
**Case ID No.** 34430  
**Reg. Ent. Reference No.** RN101569879  
**Media** Used Oil  
**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)				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]	\$410	20-Jul-2009	24-Sep-2012	4.00	\$82	\$1,640	\$1,722
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to obtain proper financial assurance for soil remediation. The Date Required is the order effective date and the Final Date is the expected compliance date.

Approx. Cost of Compliance \$410

**TOTAL** \$1,722

## Compliance History

Customer/Respondent/Owner-Operator:	CN601403488      Effluent Recycling, Inc.	Classification: POOR	Rating: 237.25
Regulated Entity:	RN101569879      MICHAEL MARTIN & ASSOCIATES	Classification: POOR	Site Rating: 344.5
ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXR000025254
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	37305
	INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED	ID NUMBER	F1232
Location:	1010 BENJAMIN ST, FORT WORTH, TX, 76164		
TCEQ Region:	REGION 04 - DFW METROPLEX Date		
Compliance History Prepared:	October 19, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 19, 2006 to October 19, 2011		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			

Name: Clinton Sims      Phone: (512) 239-6933

### 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: 9/1/2011    Repeat Violator:      YES

### Components (Multimedia) for the Site:

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

**Effective Date: 07/20/2009**

**ADMINORDER 2007-0619-MLM-E**

- |                 |  |
|-----------------|--|
| Classification: | Major  |
| Citation:       | 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  |
| Description:    | Failure failing to permanently remove from service or bring into timely compliance with upgrade requirements an existing Underground Storage Tank ("UST") system. Specifically, Effluent failed to permanently remove from service or bring into compliance a registered, temporarily out-of-service UST at the Facility   |
| Classification: | Major  |
| Citation:       | 30 TAC Chapter 324, SubChapter A 324.4(1)  |
| Description:    | Failure to prevent the discharge of used oil from tanks and containers to surface soils. Specifically, used oil and/or hydraulic fluid from an industrial compressor on the property were noted to have discharged to approximately 25 square feet of soil   |
| Classification: | Major  |
| Citation:       | 30 TAC Chapter 324, SubChapter A 324.11(2)<br>30 TAC Chapter 324, SubChapter A 324.4(2)(C)(i)  |
| Description:    | Failed to obtain a registration for transporting and storing used oil. Specifically, approximately 200 55-gallon drums containing used oil had been stored at the Facility for approximately three calendar years.   |
| Classification: | Major  |
| Citation:       | 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(B)<br>40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.190  |
| Description:    | Failure to limit storage of hazardous waste to 90 days or less, and failing to prevent the accumulation and/or storage of hazardous waste in tanks without adequate secondary containment, integrity assessment, and recordkeeping, as documented during an investigation conducted August 2, 2007. Specifically, samples of the wastes collected from Frac Tanks 1 and 2 and Storage Tank 3 indicated the wastes were characteristically hazardous for Benzene (D018) |
| Classification: | Major  |
| Citation:       | 30 TAC Chapter 324, SubChapter A 324.22(b)<br>30 TAC Chapter 324, SubChapter A 324.22(c)<br>30 TAC Chapter 324, SubChapter A 324.22(e)<br>30 TAC Chapter 37, SubChapter L 37.2011  |
| Description:    | Failure to establish and maintain financial assurance for soil remediation.  |
| Classification: | Major  |
| Citation:       | 30 TAC Chapter 335, SubChapter C 335.62<br>40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11  |
| Description:    | Failure to conduct an appropriate hazardous waste determination on wastes generated at the Facility. Specifically, analysis of a sample from a drum of unknown waste located along the north fence line exhibited toxicity characteristic for Chromium (D007). Additionally, no waste determination had been conducted on the contents of a 6,000 gallon poly-plastic tank.  |
| Classification: | Major  |
| Citation:       | 30 TAC Chapter 335, SubChapter A 335.2(a)<br>30 TAC Chapter 335, SubChapter B 335.43(a)<br>40 CFR Chapter 270, SubChapter I, PT 270, SubPT A 270.1(c)  |
| Description:    | Failed to obtain a permit to store hazardous waste in on-site storage tank #3, the in ground tank, and frac tanks #1 and #2. Specifically, sample results from investigations conducted on October 23, 2001 and February 19, 2002 indicated that the on-site storage tank #3, the in-ground tank, and frac tanks #1 and #2 were managing characteristically hazardous waste.   |

Classification: Minor  
Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(8)  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.173  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.176  
Description: Failed to close hazardous waste containers, except when necessary to add or remove waste and failed to maintain containers holding ignitable waste at least fifty feet from the Facility's property line. Specifically, frac tanks #1 and #2 containing elevated levels of benzene were not properly closed and did not have seals for any type of closure, as is required. The location of frac tanks #1 and #2 at the southwest corner of the property were approximately ten feet from the property line.

Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(9)  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.192  
Description: Failed to provide written assessment reviewed and certified by an independent, qualified, registered professional engineer attesting that the tank and tank system had sufficient structural integrity and was acceptable for storing and treating hazardous waste. Specifically, Effluent was unable to provide any written assessments reviewed and certified by an independent, qualified, registered professional engineer for the in-ground tank and the on-site storage tank #3.

Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(9)  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.193  
Description: Failed to install and maintain secondary containment which is designed to prevent any migration of wastes or accumulated liquids out of the system into the soil, groundwater, or surface water at any time during the use of the tank system. Specifically, there was no secondary containment for the in-ground tank or on-site storage tank #3.

Classification: Minor  
Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(9)  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.195(g)  
Description: Failed to provide documentation for inspections conducted on the tank system. Specifically, there was no documentation to indicate that Effluent conducted any inspections of the in-ground tank and the on-site storage tank #3.

Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter A 335.4(1)  
Description: Failed to prevent the disposal of industrial solid waste in such a manner to cause the discharge or imminent threat of discharge into or adjacent to the waters in the state without specific authorization. At the time of the June 6, 2001 and October 23, 2001 investigations, the investigator collected soil samples, and analytical results confirmed elevated levels of petroleum constituents.

Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter C 335.62  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11  
Description: Failed to conduct a complete Hazardous Waste Determination for the ground storage tank bottoms, the contents of the four storage tanks, the contaminated soil in the roll-off box, the contents of the in-ground tank, and the contents of the two frac tanks. Specifically, samples collected October 23, 2001, revealed a flash point of <40°F from Frac Tank #1, Frac Tank #2 revealed TCLP benzene of 5.8 mg/L, and Storage tank #3 revealed TCLP benzene of 9.6 mg/L.

Classification: Moderate  
Citation: 30 TAC Chapter 327 327.3(b)  
30 TAC Chapter 327 327.5(c)  
Description: Failed to make notifications of reportable discharges or spills into the environment within twenty-four hours. During the June 6, 2001, and February 15, 2002, investigations, the investigator observed large pools of liquids and oily wastes throughout the walled area and significant surface staining throughout the property indicated the occurrence of spills at least since the June 6, 2001, investigation.

Classification: Moderate  
Citation: 30 TAC Chapter 324, SubChapter A 324.22(d)(3)  
Description: Failed to provide secondary containment for all areas where used oil is stored, transferred, or otherwise handled, including, but not limited to, loading docks, parking areas, storage areas, and any other areas where shipments of used oil are held for more than 24 hours. Specifically, used oil had been transported to and stored at the Facility without secondary containment.

Classification: Moderate  
Citation: 30 TAC Chapter 335, SubChapter A 335.4(1)  
Description: Failed to prevent the discharge of wastes from tanks and containers to surface soils. Specifically, discharges of dye waste mixed with used oil, petroleum products and/or other wastes and absorbents were observed on approximately 14,000 square feet of soil at the Facility.

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	03/23/2007	(539386)
2	10/19/2009	(775454)
3	05/24/2011	(785242)
4	09/16/2011	(934101)

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

**Date: 07/12/2010(785242)**

- Self Report? NO Classification: Major  
 Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  
 Description: Failure failing to permanently remove from service or bring into timely compliance with upgrade requirements an existing Underground Storage Tank ("UST") system. Specifically, Effluent failed to permanently remove from service or bring into compliance a registered, temporarily out-of-service UST at the Facility
- Self Report? NO Classification: Major  
 Citation: 30 TAC Chapter 324, SubChapter A 324.4(1)  
 Description: Failure to prevent the discharge of used oil from tanks and containers to surface soils. Specifically, used oil and/or hydraulic fluid from an industrial compressor on the property were noted to have discharged to approximately 25 square feet of soil
- Self Report? NO Classification: Major  
 Citation: 30 TAC Chapter 324, SubChapter A 324.11(2)  
 30 TAC Chapter 324, SubChapter A 324.4(2)(C)(i)  
 Description: Failed to obtain a registration for transporting and storing used oil. Specifically, approximately 200 55-gallon drums containing used oil had been stored at the Facility for approximately three calendar years.
- Self Report? NO Classification: Major  
 Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(B)  
 40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.190  
 Description: Failure to limit storage of hazardous waste to 90 days or less, and failing to prevent the accumulation and/or storage of hazardous waste in tanks without adequate secondary containment, integrity assessment, and recordkeeping, as documented during an investigation conducted August 2, 2007. Specifically, samples of the wastes collected from Frac Tanks 1 and 2 and Storage Tank 3 indicated the wastes were characteristically hazardous for Benzene (D018).
- Self Report? NO Classification: Major  
 Citation: 30 TAC Chapter 324, SubChapter A 324.22(b)  
 30 TAC Chapter 324, SubChapter A 324.22(c)  
 30 TAC Chapter 324, SubChapter A 324.22(e)  
 30 TAC Chapter 37, SubChapter L 37.2011  
 Description: Failure to establish and maintain financial assurance for soil remediation.
- Self Report? NO Classification: Major  
 Citation: 30 TAC Chapter 335, SubChapter C 335.62  
 40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11  
 Description: Failure to conduct an appropriate hazardous waste determination on wastes generated at the Facility, as documented during an investigation conducted August 2, 2007. Specifically, analysis of a sample from a drum of unknown waste located along the north fence line exhibited toxicity characteristic for Chromium (D007). Additionally, no waste determination had been conducted on the contents of a 6,000 gallon poly-plastic tank.
- Self Report? NO Classification: Major  
 Citation: 30 TAC Chapter 335, SubChapter A 335.2(a)  
 30 TAC Chapter 335, SubChapter B 335.43(a)  
 40 CFR Chapter 270, SubChapter I, PT 270, SubPT A 270.1(c)  
 Description: Failed to obtain a permit to store hazardous waste in on-site storage tank #3, the in ground tank, and frac tanks #1 and #2. Specifically, sample results from investigations conducted on October 23, 2001 and February 19, 2002 indicated that the on-site storage tank #3, the in-ground tank, and frac tanks #1 and #2 were managing characteristically hazardous waste.
- Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(8)  
 40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.173  
 40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.176  
 Description: Failed to close hazardous waste containers, except when necessary to add or remove waste and failing to maintain containers holding ignitable waste at least fifty feet from the Facility's property line. Specifically, frac tanks #1 and #2 containing elevated levels of benzene were not properly closed and did not have seals for any type of closure, as is required. The location of frac tanks #1 and #2 at the southwest corner of the property were approximately ten feet from the property line.
- Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(9)  
 40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.192  
 Description: Failed to provide written assessment that was reviewed and certified by an independent, qualified, registered professional engineer attesting that the tank and tank system had sufficient structural integrity and was acceptable for the storing and treating of hazardous waste. Specifically, Effluent was unable to provide any written assessments that were reviewed and certified by an independent, qualified, registered professional engineer for the in-ground tank and the on-site storage tank #3.
- Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(9)  
 40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.193  
 Description: Failed to install and maintain secondary containment designed to prevent any migration of wastes or accumulated liquids out of the system into the soil, groundwater, or surface water at any time during the use of the tank system. Specifically, there was no secondary containment for the in-ground tank or storage tank #3.
- Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(9)  
 40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.195(g)  
 Description: Failed to provide documentation for inspections conducted on the tank system. Specifically, there was no documentation to indicate that the Effluent conducted any inspections of the in-ground tank and storage tank #3.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 335, SubChapter A 335.4(1)  
 Description: Failed to prevent the disposal of industrial solid waste in such a manner to cause the discharge or imminent threat of discharge into or adjacent to the waters in the state without specific authorization. At the time of the June 6, 2001 and October 23, 2001 investigations, the investigator collected soil samples, and analytical results confirmed elevated levels of petroleum constituents.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 335, SubChapter C 335.62  
 40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11  
 Description: Failed to conduct a complete Hazardous Waste Determination for the ground storage tank bottoms, the contents of the four storage tanks, the contaminated soil in the roll-off box, the contents of the in-ground tank, and the contents of the two frac tanks. Specifically, samples collected October 23, 2001, revealed a flash point of <40°F from Frac Tank #1, Frac Tank #2 revealed TCLP benzene of 5.8 mg/L, and Storage tank #3 revealed TCLP benzene of 9.6 mg/L.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 327 327.3(b)  
 30 TAC Chapter 327 327.5(c)  
 Description: Failed to make notifications of reportable discharges or spills into the environment within twenty-four hours as documented during investigations conducted June 6, 2001, and February 15, 2002. During the June 6, 2001, and February 15, 2002, investigations, the investigator observed large pools of liquids and oily wastes throughout the walled area and significant surface staining throughout the property indicated the occurrence of spills at least since the June 6, 2001, investigation.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 324, SubChapter A 324.22(d)(3)  
 Description: Failed to provide secondary containment for all areas where used oil is stored, transferred, or otherwise handled, including, but not limited to, loading docks, parking areas, storage areas, and any other areas where shipments of used oil are held for more than 24 hours. Specifically, used oil had been transported to and stored at the Facility without secondary containment.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 335, SubChapter A 335.4(1)  
 Description: Failed to prevent the discharge of wastes from tanks and containers to surface soils. Specifically, discharges of dye waste mixed with used oil, petroleum products and/or other wastes and absorbents were observed on approximately 14,000 square feet of soil at the Facility.

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

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



# Compliance History Report

**PUBLISHED** Compliance History Report for CN603982745, RN106267891, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN600347504, Michael Martin

**Classification:** UNCLASSIFIED

**Rating:** -----

**Regulated Entity:** RN101569879, MICHAEL MARTIN & ASSOCIATES

**Classification:** NOT APPLICABLE

**Rating:** N/A

**Complexity Points:** N/A

**Repeat Violator:** N/A

**CH Group:** 14 - Other

**Location:** 1010 BENJAMIN ST FORT WORTH, TX 76164-9302, TARRANT COUNTY

**TCEQ Region:** REGION 04 - DFW METROPLEX

**ID Number(s):**

**INDUSTRIAL AND HAZARDOUS WASTE**

**NONPERMITTED ID NUMBER F1232**

**INDUSTRIAL AND HAZARDOUS WASTE OTS REQUEST 36421**

**INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXP490351324**

**INDUSTRIAL AND HAZARDOUS WASTE EPA ID**

**TXR000025254**

**INDUSTRIAL AND HAZARDOUS WASTE OTS REQUEST 36513**

**Compliance History Period:** September 01, 2006 to August 31, 2011

**Rating Year:** 2011

**Rating Date:** 09/01/2011

**Date Compliance History Report Prepared:** May 22, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** October 19, 2006 to October 19, 2011

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Clinton Sims

**Phone:** (512) 239-6933

## Site and Owner/Operator History:

- 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** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

## Components (Multimedia) for the Site Are Listed in Sections A - J

### **A. Final Orders, court judgments, and consent decrees:**

**Effective Date:** 07/20/2009

**ADMINORDER 2007-0619-MLM-E**

**Classification:** Major

**Citation:** 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

**Description:** Failure failing to permanently remove from service or bring into timely compliance with upgrade requirements an existing Underground Storage Tank ("UST") system. Specifically, Effluent failed to permanently remove from service or bring into compliance a registered, temporarily out-of-service UST at the Facility

**Classification:** Major

**Citation:** 30 TAC Chapter 324, SubChapter A 324.4(1)

**Description:** Failure to prevent the discharge of used oil from tanks and containers to surface soils. Specifically, used oil and/or hydraulic fluid from an industrial compressor on the property were noted to have discharged to approximately 25 square feet of soil

**Classification:** Major

**Citation:** 30 TAC Chapter 324, SubChapter A 324.11(2)  
30 TAC Chapter 324, SubChapter A 324.4(2)(C)(i)

**Description:** Failed to obtain a registration for transporting and storing used oil. Specifically, approximately 200 55-gallon drums containing used oil had been stored at the Facility for approximately three calendar years.

**Classification:** Major

**Citation:** 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(B)  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.190

**Description:** Failure to limit storage of hazardous waste to 90 days or less, and failing to prevent the accumulation and/or storage of hazardous waste in tanks without adequate secondary containment, integrity assessment, and recordkeeping, as documented during an investigation conducted August 2, 2007. Specifically, samples of the wastes collected from Frac Tanks 1 and 2 and Storage Tank 3 indicated the wastes were characteristically hazardous for Benzene (D018) **Classification:** Major

**Citation:** 30 TAC Chapter 324, SubChapter A 324.22(b)  
30 TAC Chapter 324, SubChapter A 324.22(c)  
30 TAC Chapter 324, SubChapter A 324.22(e)  
30 TAC Chapter 37, SubChapter L 37.2011

**Description:** Failure to establish and maintain financial assurance for soil remediation.

**Classification:** Major

**Citation:** 30 TAC Chapter 335, SubChapter C 335.62  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11

- Description: Failure to conduct an appropriate hazardous waste determination on wastes generated at the Facility. Specifically, analysis of a sample from a drum of unknown waste located along the north fence line exhibited toxicity characteristic for Chromium (D007). Additionally, no waste determination had been conducted on the contents of a 6,000 gallon poly-plastic tank.
- Classification: Major
- Citation: 30 TAC Chapter 335, SubChapter A 335.2(a)  
30 TAC Chapter 335, SubChapter B 335.43(a)  
40 CFR Chapter 270, SubChapter I, PT 270, SubPT A 270.1(c)
- Description: Failed to obtain a permit to store hazardous waste in on-site storage tank #3, the in ground tank, and frac tanks #1 and #2. Specifically, sample results from investigations conducted on October 23, 2001 and February 19, 2002 indicated that the on-site storage tank #3, the in-ground tank, and frac tanks #1 and #2 were managing characteristically hazardous waste.
- Classification: Minor
- Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(8)  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.173  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.176
- Description: Failed to close hazardous waste containers, except when necessary to add or remove waste and failed to maintain containers holding ignitable waste at least fifty feet from the Facility's property line. Specifically, frac tanks #1 and #2 containing elevated levels of benzene were not properly closed and did not have seals for any type of closure, as is required. The location of frac tanks #1 and #2 at the southwest corner of the property were approximately ten feet from the property line.
- Classification: Moderate
- Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(9)  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.192
- Description: Failed to provide written assessment reviewed and certified by an independent, qualified, registered professional engineer attesting that the tank and tank system had sufficient structural integrity and was acceptable for storing and treating hazardous waste. Specifically, Effluent was unable to provide any written assessments reviewed and certified by an independent, qualified, registered professional engineer for the in-ground tank and the on-site storage tank #3.
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- Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(9)  
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- Description: Failed to install and maintain secondary containment which is designed to prevent any migration of wastes or accumulated liquids out of the system into the soil, groundwater, or surface water at any time during the use of the tank system. Specifically, there was no secondary containment for the in-ground tank or on-site storage tank #3.
- Classification: Minor
- Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(9)  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.195(g)
- Description: Failed to provide documentation for inspections conducted on the tank system. Specifically, there was no documentation to indicate that Effluent conducted inspections of the in-ground tank and the on-site storage tank #3.
- Classification: Moderate
- Citation: 30 TAC Chapter 335, SubChapter A 335.4(1)
- Description: Failed to prevent the disposal of industrial solid waste in such a manner to cause the discharge or imminent threat of discharge into or adjacent to the waters in the state without specific authorization. At the time of the June 6, 2001 and October 23, 2001 investigations, the investigator collected soil samples, and analytical results confirmed elevated levels of petroleum constituents.
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- Citation: 30 TAC Chapter 335, SubChapter C 335.62  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11
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- Description: Failed to provide secondary containment for all areas where used oil is stored, transferred, or otherwise handled, including, but not limited to, loading docks, parking areas, storage areas, and any other areas where shipments of used oil are held for more than 24 hours. Specifically, used oil had been transported to and stored at the Facility without secondary containment.
- Classification: Moderate
- Citation: 30 TAC Chapter 335, SubChapter A 335.4(1)
- Description: Failed to prevent the discharge of wastes from tanks and containers to surface soils. Specifically, discharges of dye waste mixed with used oil, petroleum products and/or other wastes and absorbents were observed on approximately 14,000 square feet of soil at the Facility.

## B. Criminal convictions:

N/A

**C. Chronic excessive emissions events:**

N/A

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

Item 1            October 19, 2009            (775454)

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

**Date: 07/12/2010 (785242)**

Self Report?	NO	Classification:	Major
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)		
Description:	Failure failing to permanently remove from service or bring into timely compliance with upgrade requirements an existing Underground Storage Tank ("UST") system. Specifically, Effluent failed to permanently remove from service or bring into compliance a registered, temporarily out-of-service UST at the Facility		
Self Report?	NO	Classification:	Major
Citation:	30 TAC Chapter 324, SubChapter A 324.4(1)		
Description:	Failure to prevent the discharge of used oil from tanks and containers to surface soils. Specifically, used oil and/or hydraulic fluid from an industrial compressor on the property were noted to have discharged to approximately 25 square feet of soil		
Self Report?	NO	Classification:	Major
Citation:	30 TAC Chapter 324, SubChapter A 324.11(2) 30 TAC Chapter 324, SubChapter A 324.4(2)(C)(i)		
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Self Report?	NO	Classification:	Major
Citation:	30 TAC Chapter 324, SubChapter A 324.22(b) 30 TAC Chapter 324, SubChapter A 324.22(c) 30 TAC Chapter 324, SubChapter A 324.22(e) 30 TAC Chapter 37, SubChapter L 37.2011		
Description:	Failure to establish and maintain financial assurance for soil remediation.		
Self Report?	NO	Classification:	Major
Citation:	30 TAC Chapter 335, SubChapter C 335.62 40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11		
Description:	Failure to conduct an appropriate hazardous waste determination on wastes generated at the Facility, as documented during an investigation conducted August 2, 2007. Specifically, analysis of a sample from a drum of unknown waste located along the north fence line exhibited toxicity characteristic for Chromium (D007). Additionally, no waste determination had been conducted on the contents of a 6,000 gallon poly-plastic tank.		
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Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 335, SubChapter E 335.112(a)(8) 40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.173 40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.176		
Description:	Failed to close hazardous waste containers, except when necessary to add or remove waste and failing to maintain containers holding ignitable waste at least fifty feet from the Facility's property line. Specifically, frac tanks #1 and #2 containing elevated levels of benzene were not properly closed and did not have seals for any type of closure, as is required. The location of frac tanks #1 and #2 at the southwest corner of the property were approximately ten feet from the property line.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 335, SubChapter E 335.112(a)(9) 40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.192		
Description:	Failed to provide written assessment that was reviewed and certified by an independent, qualified, registered professional engineer attesting that the tank and tank system had sufficient structural integrity and was acceptable for the storing and treating of hazardous waste. Specifically, Effluent was unable to provide any written assessments that were reviewed and certified by an independent, qualified, registered professional engineer for the in-ground tank and the on-site storage tank #3.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 335, SubChapter E 335.112(a)(9) 40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.193		
Description:	Failed to install and maintain secondary containment designed to prevent any migration of wastes or accumulated liquids out of the system into the soil, groundwater, or surface water at any time during the use of the tank system. Specifically, there was no secondary containment for the in-ground tank or storage tank #3.		
Self Report?	NO	Classification:	Minor

Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(9)  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT J 265.195(g)

Description: Failed to provide documentation for inspections conducted on the tank system. Specifically, there was no documentation to indicate that the Effluent conducted any inspections of the in-ground tank and storage tank #3.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.4(1)

Description: Failed to prevent the disposal of industrial solid waste in such a manner to cause the discharge or imminent threat of discharge into or adjacent to the waters in the state without specific authorization. At the time of the June 6, 2001 and October 23, 2001 investigations, the investigator collected soil samples, and analytical results confirmed elevated levels of petroleum constituents.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.62  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11

Description: Failed to conduct a complete Hazardous Waste Determination for the ground storage tank bottoms, the contents of the four storage tanks, the contaminated soil in the roll-off box, the contents of the in-ground tank, and the contents of the two frac tanks. Specifically, samples collected October 23, 2001, revealed a flash point of <40°F from Frac Tank #1, Frac Tank #2 revealed TCLP benzene of 5.8 mg/L, and Storage tank #3 revealed TCLP benzene of 9.6 mg/L.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 327 327.3(b)  
30 TAC Chapter 327 327.5(c)

Description: Failed to make notifications of reportable discharges or spills into the environment within twenty-four hours as documented during investigations conducted June 6, 2001, and February 15, 2002. During the June 6, 2001, and February 15, 2002, investigations, the investigator observed large pools of liquids and oily wastes throughout the walled area and significant surface staining throughout the property indicated the occurrence of spills at least since the June 6, 2001, investigation.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 324, SubChapter A 324.22(d)(3)

Description: Failed to provide secondary containment for all areas where used oil is stored, transferred, or otherwise handled, including, but not limited to, loading docks, parking areas, storage areas, and any other areas where shipments of used oil are held for more than 24 hours. Specifically, used oil had been transported to and stored at the Facility without secondary containment.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.4(1)

Description: Failed to prevent the discharge of wastes from tanks and containers to surface soils. Specifically, discharges of dye waste mixed with used oil, petroleum products and/or other wastes and absorbents were observed on approximately 14,000 square feet of soil at the Facility.

**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 EFFLUENT  
RECYCLING, INC. AND  
MICHAEL W. MARTIN;  
RN101569879**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2011-1973-MLM-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 EFFLUENT RECYCLING, INC and Michael W. Martin ("Respondents") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE chs. 361 and 371. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondents presented this Agreed Order to the Commission.

Respondents understand that they have 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, Respondents agree 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 Respondents.

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

### **FINDINGS OF FACT**

1. Respondent Michael W. Martin owns and Respondent EFFLUENT RECYCLING, INC. operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and an industrial hazardous waste generation, storage and disposal facility located at 1010 Benjamin Street in Fort Worth, Tarrant County, Texas (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ. The Facility involves the management and/or the disposal of industrial solid and/or hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361, and the management and/or the disposal of used oil as defined in TEX. HEALTH & SAFETY CODE ch. 371.
2. During an investigation conducted on June 16, 2011, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondents:
  - a. Failed to either permanently remove an existing UST from service or bring the UST into timely compliance with upgrade requirements;

- b. Failed to prevent the discharge of wastes from tanks and containers to surface soils. Specifically, discharges of waste, petroleum products, and/or absorbents were observed at the Facility, no Affected Property Assessment Report has been received by the TCEQ, and response actions required by the Texas Risk Reduction Program have not been taken;
  - c. Failed to limit storage of hazardous waste at the Facility to 90 days or less;
  - d. Failed to conduct an appropriate hazardous waste determinations on wastes generated at the Facility;
  - e. Failed to obtain authorization prior to storing hazardous waste. Specifically, sample results indicated that tanks, drums, and containers at the Facility contain unauthorized hazardous waste;
  - f. Failed to provide a written assessment reviewed and certified by an independent, qualified, registered professional engineer attesting that the storage tank and tank system at the Facility has sufficient structural integrity and was acceptable for the storing and treating of hazardous waste;
  - g. Failed to install and maintain secondary containment designed to prevent any migration of wastes or accumulated liquids out of the storage tank at the Facility and into the soil, groundwater, or surface water during the use of the tank system;
  - h. Failed to provide documentation for inspections conducted on the storage tank system at the Facility;
  - i. Failed to make notifications of reportable discharges or spills into the environment within twenty-four hours. Specifically, between 2001 and 2011, TCEQ investigators observed a pattern of repeated discharges at the Facility, however, the TCEQ has no records of any notifications of reportable discharges or spills submitted by either Respondent;
  - j. Failed to close hazardous waste containers, except when necessary to add or remove waste, and failed to locate containers holding ignitable waste at least fifty feet from the Facility's property line. Specifically, containers were not properly closed and did not have seals for any type of closure, and containers holding ignitable waste were located less than fifty feet from the property line;
  - k. Failed to register with the Commission prior to transporting and storing used oil. Specifically, 55-gallon drums containing used oil had been stored at the Facility for approximately three calendar years without the required registration; and
  - l. Failed to establish and maintain financial assurance for soil remediation at the Facility.
3. Respondents received notice of the violations on or about September 25, 2011.
  4. The Executive Director recognizes that as of January 29, 2013, the UST at the Facility had been removed and operations at the Facility had ceased.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE chs. 361 and 371, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 2.a., Respondents failed to either permanently remove an existing UST from service or bring the UST into timely compliance with upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2) and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.d.
3. As evidenced by Finding of Fact No. 2.b., Respondents failed to prevent the discharge of wastes from tanks and containers to surface soils, in violation of 30 TEX. ADMIN. CODE §§ 335.2(a) and (b) and 335.4, and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provisions Nos. 2.a.i. and 2.e.
4. As evidenced by Finding of Fact No. 2.c., Respondents failed to limit storage of hazardous waste to 90 days or less, in violation of 30 TEX. ADMIN. CODE § 335.69(a)(1)(B), 40 C.F.R. § 265.190, and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.a.iii.
5. As evidenced by Finding of Fact No. 2.d., Respondents failed to conduct an appropriate hazardous waste determinations on wastes generated at the Facility, in violation of 30 TEX. ADMIN. CODE § 335.62, 40 C.F.R. § 262.11, and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.b.ii.
6. As evidenced by Finding of Fact No. 2.e., Respondents failed to obtain authorization prior to storing hazardous waste, in violation of 30 TEX. ADMIN. CODE §§ 335.2(a) and (b) and 335.43(a), and 40 C.F.R. § 270.1(c).
7. As evidenced by Finding of Fact No. 2.f., Respondents failed to provide a written assessment reviewed and certified by an independent, qualified, registered professional engineer attesting that the storage tank and tank system at the Facility has sufficient structural integrity and was acceptable for the storing and treating of hazardous waste, in violation of 30 TEX. ADMIN. CODE § 335.112(a)(9), 40 C.F.R. § 265.192, and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.b.iv.
8. As evidenced by Finding of Fact No. 2.g., Respondents failed to install and maintain secondary containment designed to prevent any migration of wastes or accumulated liquids out of the storage tank at the Facility and into the soil, groundwater, or surface water during the use of the tank system, in violation of 30 TEX. ADMIN. CODE § 335.112(a)(9), 40 C.F.R. § 265.193, and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.b.i.
9. As evidenced by Finding of Fact No. 2.h., Respondents failed to provide documentation for inspections conducted on the storage tank system at the Facility, in violation of 30 TEX. ADMIN. CODE § 335.112(a)(9), 40 C.F.R. § 265.195, and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.a.ii.
10. As evidenced by Finding of Fact No. 2.i., Respondents failed to make notifications of reportable discharges or spills into the environment within twenty-four hours, in violation of 30 TEX. ADMIN. CODE §§ 327.3(b) and 327.5(c), and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.b.v.
11. As evidenced by Finding of Fact No. 2.j., Respondents failed to close hazardous waste containers, except when necessary to add or remove waste, and failed to locate containers holding ignitable waste at least fifty feet from the Facility's property line, in violation of 30 TEX. ADMIN. CODE § 335.112(a)(8), 40 C.F.R. §§ 265.173 and 265.176, and Agreed Order, Ordering Provision No. 2.b.iii.
12. As evidenced by Finding of Fact No. 2.k., Respondents failed register with the Commission prior to transporting and storing used oil, in violation of 30 TEX. ADMIN. CODE §§ 324.11(2) and 324.4(2)(C)(i), and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.c.

13. As evidenced by Finding of Fact No. 2.I., Respondents failed to establish and maintain financial assurance for soil remediation at the Facility, in violation of 30 TEX. ADMIN. CODE §§ 37.2011 and 324.22(b), (c) and (e), and TCEQ Agreed Order Docket No. 2007-0619-MLM-E, Ordering Provision No. 2.c.ii.
14. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents 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.
15. An administrative penalty in the amount of four hundred twenty-one thousand nine hundred sixty-three dollars (\$421,963.00) 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. The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Respondent EFFLUENT RECYCLING, INC. and determined that Respondent EFFLUENT RECYCLING, INC. is unable to pay all or part of the administrative penalty. Therefore, four hundred twenty thousand seven hundred sixty-three dollars (\$420,763.00) of the administrative penalty is deferred contingent upon Respondents' timely and satisfactory compliance with all the terms of this Agreed Order and shall be waived only upon full compliance with all the terms and conditions contained in this Agreed Order. If Respondents fail to timely and satisfactorily comply with any requirement contained in this Agreed Order, including any payment schedule, the Executive Director may require Respondent EFFLUENT RECYCLING, INC. to pay all or part of the deferred administrative penalty.

Respondent EFFLUENT RECYCLING, INC. paid one hundred dollars (\$100.00) of the undeferred administrative penalty. The remaining amount of one thousand one hundred dollars (\$1,100.00) shall be payable in eleven (11) monthly payments of one hundred dollars (\$100.00) each. The first 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 EFFLUENT RECYCLING, INC. fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, 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, the acceleration of any remaining balance constitutes the failure by Respondent EFFLUENT RECYCLING, INC. to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of the deferred penalty amount.

16. On or about October 27, 2010, Respondent Michael W. Martin filed a petition for bankruptcy relief pursuant to Chapter 13 of the United States Code. The automatic stay imposed by the Bankruptcy Code, at 11 U.S.C. § 362(a), does not apply to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, by virtue of the exception set out at 11 U.S.C. § 362(b)(4). Accordingly, the TCEQ, which is a governmental unit as defined under 11 U.S.C. § 101(27), is expressly excepted from the automatic stay in pursuing enforcement of the State's environmental protection laws, and in seeking to liquidate its damages for such violations. The TCEQ will not, however, seek to collect the administrative penalty in this case from Respondent Michael W. Martin.

## ORDERING PROVISIONS

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

1. Respondent EFFLUENT RECYCLING, INC. is assessed an administrative penalty as set forth in Conclusion of Law No. 15, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' 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: EFFLUENT RECYCLING INC., Docket No. 2011-1973-MLM-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. Respondents shall undertake the following technical requirements:
  - a. Within 90 days after the effective date of this Agreed Order, Respondents shall submit to the Executive Director for approval an Affected Property Assessment Report ("APAR"), pursuant to 30 TEX. ADMIN. CODE § 350.91, and, if response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program ("TRRP") found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(I)); and Institutional Controls under Subchapter F. The APAR shall be submitted to:

Remediation Division, MC 225  
Texas Commission on Environmental Quality  
P.O. Box 13807  
Austin, Texas 78711-3087

- b. Respondents shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the APAR within 30 days of such requests or by any other deadline specified in writing by the TCEQ.
  - c. Within 105 days after the effective date of this Agreed Order, Respondents shall submit written certification to demonstrate compliance with Ordering Provision No. 2.a. The certification 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."

Respondents 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:

Sam Barrett, Waste Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Dr.  
Fort Worth TX 76118-6951

3. All relief not expressly granted in this Agreed Order is denied.
4. The provisions of this Agreed Order shall apply to and be binding upon Respondents.
5. If Respondents fail 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, Respondents' failure to comply is not a violation of this Agreed Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against Respondents 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.
8. 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 Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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.

11. 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 Respondents, or three days after the date on which the Commission mails notice of this Agreed Order to Respondents, 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

June 12, 2013  
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 EFFLUENT RECYCLING, INC. and/or Michael W. Martin, as applicable, 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.

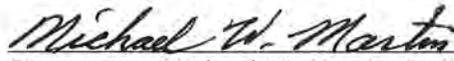
I also understand that failure to comply with the Ordering Provisions in this Agreed Order and/or failure to timely pay the penalty amount may result in:

- 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 – Michael W. Martin, President  
EFFLUENT RECYCLING, INC.

3-27-2013  
Date

  
\_\_\_\_\_  
Signature – Michael W. Martin, Individually

3-27-2013  
Date