

Executive Summary – Enforcement Matter – Case No. 50272
Marcelo Vera and Marcelo's, L.P.
RN107904336
Docket No. 2015-0474-MLM-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM - MSW, WQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Marcelo's Recycling Site, located approximately 1,000 feet southeast of the intersection of Hergotz Lane and Dalton Lane at the bend in Hergotz Lane, Travis County

Type of Operation:

Composting and mulch facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: July 31, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$21,009

Amount Deferred for Expedited Settlement: \$4,201

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$488

Total Due to General Revenue: \$16,320

Payment Plan: 34 payments of \$480 each

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - N/A

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Executive Summary – Enforcement Matter – Case No. 50272
Marcelo Vera and Marcelo's, L.P.
RN107904336
Docket No. 2015-0474-MLM-E

Investigation Information

Complaint Date(s): August 14, 2014

Complaint Information: Alleged the Respondents were operating without authorization.

Date(s) of Investigation: August 15, 2014 and February 20, 2015

Date(s) of NOE(s): March 5, 2015

Violation Information

1. Failed to submit a Notice of Intent ("NOI") prior to the commencement of recycling activities. Specifically, the Respondents were storing and processing brush and trees without providing prior notice to the TCEQ [30 TEX. ADMIN. CODE § 328.5(b)].
2. Failed to maintain a fire prevention and suppression plan and make it available to the local fire prevention authority [30 TEX. ADMIN. CODE § 328.5(h)].
3. Failed to maintain financial assurance adequate for closure of a recycling facility. Specifically, financial assurance was not provided for approximately 24,803 cubic yards of combustible material [30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d)].
4. Failed to obtain authorization for storm water discharges under the Texas Pollutant Discharge Elimination System Multi-Sector General Permit associated with an industrial facility. Specifically, the Respondents had not submitted an NOI to obtain coverage [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondents began maintaining a fire prevention and suppression plan and made it available to the local fire prevention authority on February 23, 2015.

Technical Requirements:

The Order will require the Respondents to:

- a. Immediately, cease accepting additional recyclable materials until such time that all requirements of an NOI for the Facility have been approved by the Executive Director;
- b. Within 30 days, develop and implement a storm water pollution prevention plan and submit an NOI to obtain authorization to discharge storm water from the Facility; and
- c. Within 60 days, submit documentation that demonstrates acceptable financial assurance for closure of the Facility.

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RN107904336
Docket No. 2015-0474-MLM-E**

In lieu of a. through c.:

- d. Within 90 days, dispose of all recyclable materials at an authorized facility; and
- e. Within 105 days, submit written certification to demonstrate compliance with a. through c. or d.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Rebecca Boyett, Enforcement Division,
Enforcement Team 7, MC 128, (512) 239-2503; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456
TCEQ SEP Coordinator: N/A
Respondent: Marcelo Vera, General Manager, Marcelo's, L.P., P.O. Box 19415, Austin,
Texas 78760
Marcelo Vera, Marcelo's, L.P., P.O. Box 19415, Austin, Texas 78760
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	9-Mar-2015	Screening	13-Mar-2015	EPA Due	
	PCW	31-Mar-2015				

RESPONDENT/FACILITY INFORMATION	
Respondent	Marcelo Vera and Marcelo's, L.P.
Reg. Ent. Ref. No.	RN107904336
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	50272	No. of Violations	4
Docket No.	2015-0474-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Water Quality	Enf. Coordinator	Rebecca Boyett
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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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.	
Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7
		\$0

Notes: No adjustment for compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$937
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$14,941	*Capped at the Total EB \$ Amount	
Estimated Cost of Compliance	\$20,932		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,563
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OTHER FACTORS AS JUSTICE MAY REQUIRE	220.1%	Adjustment	\$14,446
Reduces or enhances the Final Subtotal by the indicated percentage.			

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 3.

Final Penalty Amount	\$21,009
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$21,009
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DEFERRAL	20.0% Reduction	Adjustment	-\$4,201
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)			

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$16,808
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Screening Date 13-Mar-2015

Docket No. 2015-0474-MLM-E

PCW

Respondent Marcelo Vera and Marcelo's, L.P.

Policy Revision 4 (April 2014)

Case ID No. 50272

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107904336

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rebecca Boyett

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 (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date 13-Mar-2015

Docket No. 2015-0474-MLM-E

PCW

Respondent Marcelo Vera and Marcelo's, L.P.

Policy Revision 4 (April 2014)

Case ID No. 50272

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107904336

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rebecca Boyett

Violation Number 1

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

Violation Description Failed to submit a Notice of Intent ("NOI") prior to the commencement of recycling activities. Specifically, the Respondents were storing and processing brush and trees without providing prior notice to the TCEQ.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (0.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (5.0%).

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 21

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

Violation Base Penalty \$1,250

One monthly event is recommended from the February 20, 2015 record review date to the March 13, 2015 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$332

Violation Final Penalty Total \$4,001

This violation Final Assessed Penalty (adjusted for limits) \$4,001

Economic Benefit Worksheet

Respondent Marcelo Vera and Marcelo's, L.P.
Case ID No. 50272
Reg. Ent. Reference No. RN107904336
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$5,000	15-Aug-2014	13-Dec-2015	1.33	\$332	n/a	\$332
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit an NOI to conduct recycling activities. The Date Required is the initial investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$332

Screening Date 13-Mar-2015

Docket No. 2015-0474-MLM-E

PCW

Respondent Marcelo Vera and Marcelo's, L.P.

Policy Revision 4 (April 2014)

Case ID No. 50272

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107904336

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rebecca Boyett

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 328.5(h)

Violation Description

Failed to maintain a fire prevention and suppression plan and make it available to the local fire prevention authority.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				15.0%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

3 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,750

One monthly event is recommended from the February 20, 2015 record review date to the February 23, 2015 compliance date.

Good Faith Efforts to Comply

25.0%

Reduction \$937

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

Notes The Respondents achieved compliance on February 23, 2015 prior to the Notice of Enforcement dated March 5, 2015.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$13

Violation Final Penalty Total \$9,005

This violation Final Assessed Penalty (adjusted for limits) \$9,005

Economic Benefit Worksheet

Respondent Marcelo Vera and Marcelo's, L.P.

Case ID No. 50272

Reg. Ent. Reference No. RN107904336

Media Municipal Solid Waste

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$500	15-Aug-2014	23-Feb-2015	0.53	\$13	n/a	\$13

Notes for DELAYED costs

Estimated cost to maintain a fire prevention and suppression plan and make it available to the local fire prevention authority. The Date Required is the initial investigation date and the Final Date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$13

Screening Date 13-Mar-2015

Docket No. 2015-0474-MLM-E

PCW

Respondent Marcelo Vera and Marcelo's, L.P.

Policy Revision 4 (April 2014)

Case ID No. 50272

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107904336

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rebecca Boyett

Violation Number 3

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

Violation Description Failed to maintain financial assurance adequate for closure of a recycling facility. Specifically, financial assurance was not provided for approximately 24,803 cubic yards of combustible material.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (5.0%).

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 21

Table for event frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event. Single event is marked with an 'x'.

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A. N/A is marked with an 'x'.

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$14,446 Violation Final Penalty Total \$4,001

This violation Final Assessed Penalty (adjusted for limits) \$4,001

Economic Benefit Worksheet

Respondent Marcelo Vera and Marcelo's, L.P.
Case ID No. 50272
Reg. Ent. Reference No. RN107904336
Media Municipal Solid Waste
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)	\$13,182	15-Aug-2013	15-Aug-2014	1.92	\$1,264	\$13,182	\$14,446

Notes for AVOIDED costs

Estimated cost to obtain financial assurance. The Date Required is one year prior to the initial investigation date and the Final Date is the initial investigation date.

Approx. Cost of Compliance

\$13,182

TOTAL

\$14,446

Screening Date 13-Mar-2015

Docket No. 2015-0474-MLM-E

PCW

Respondent Marcelo Vera and Marcelo's, L.P.

Policy Revision 4 (April 2014)

Case ID No. 50272

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107904336

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rebecca Boyett

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26

Violation Description Failed to obtain authorization for storm water discharges under the Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit associated with an industrial facility. Specifically, the Respondents had not submitted a NOI to obtain coverage.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0.0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	X			5.0%

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 21

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One monthly event is recommended from the February 20, 2015 record review date to the March 13, 2013 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

Notes: The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$149

Violation Final Penalty Total \$4,001

This violation Final Assessed Penalty (adjusted for limits) \$4,001

Economic Benefit Worksheet

Respondent Marcelo Vera and Marcelo's, L.P.
Case ID No. 50272
Reg. Ent. Reference No. RN107904336
Media Municipal Solid Waste
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,250	15-Aug-2014	13-Dec-2015	1.33	\$149	n/a	\$149
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a Multi-Sector General Permit and develop and implement a storm water pollution prevention plan. The Date Required is the initial investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

	\$2,250
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TOTAL

	\$149
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TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN604754036, RN107904336, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN604754036, Marcelo Vera
Classification: NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN107904336, Marcelo's Recycling Site
Classification: NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 05 - Chemical Manufacturing

Location: APPROXIMATELY 1,000 FT SE OF THE INTX OF HERGOTZ LN & DALTON LN AT THE BEND IN HERGOTZ LN
TRAVIS COUNTY PID NUMBER 847168
TRAVIS, TX, TRAVIS COUNTY

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):

MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER
R11107904336

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: April 07, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: March 13, 2010 to March 13, 2015

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

Name: Rebecca Boyett

Phone: (512) 239-2503

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** 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:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

N/A

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

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.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN600414957, RN107904336, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN600414957, MARCELO'S, L.P. **Classification:** SATISFACTORY **Rating:** 6.67

Regulated Entity: RN107904336, Marcelo's Recycling Site **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 05 - Chemical Manufacturing

Location: APPROXIMATELY 1,000 FT SE OF THE INTX OF HERGOTZ LN & DALTON LN AT THE BEND IN HERGOTZ LN
TRAVIS COUNTY PID NUMBER 847168
TRAVIS, TX, TRAVIS COUNTY

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER
R11107904336

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: March 17, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: March 13, 2010 to March 13, 2015

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

Name: Rebecca Boyett **Phone:** (512) 239-2503

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** 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:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

N/A

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

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.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MARCELO VERA AND
MARCELO'S, L.P.
RN107904336**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2015-0474-MLM-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Marcelo Vera and Marcelo's, L.P. ("Respondents") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents together stipulate that:

1. Marcelo Vera owns property where Marcelo's, L.P. operates a composting and mulch facility located approximately 1,000 feet southeast of the intersection of Hergotz Lane and Dalton Lane at the bend in Hergotz Lane in Travis County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Respondents have discharged waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about March 10, 2015.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Twenty One Thousand Nine Dollars (\$21,009) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Four Hundred Eighty-Eight Dollars (\$488) of the administrative penalty and Four Thousand Two Hundred One Dollars (\$4,201) is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondents to pay all or part of the deferred penalty.

The remaining amount of Sixteen Thousand Three Hundred Twenty Dollars (\$16,320) of the administrative penalty shall be payable in 34 monthly payments of Four Hundred Eighty Dollars (\$480) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondents fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondents to meet the payment schedule of this Agreed Order constitutes the failure by the Respondents to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondents agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondents began maintaining a fire prevention and suppression plan and made it available to the local fire prevention authority on February 23, 2015.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondents are alleged to have:

1. Failed to submit a Notice of Intent ("NOI") prior to the commencement of recycling activities, in violation of 30 TEX. ADMIN. CODE § 328.5(b), as documented during an investigation conducted on August 15, 2014 and a record review conducted on February 20, 2015. Specifically, the Respondents were storing and processing brush and trees without providing prior notice to the TCEQ.
2. Failed to maintain a fire prevention and suppression plan and make it available to the local fire prevention authority, in violation of 30 TEX. ADMIN. CODE § 328.5(h), as documented during an investigation conducted on August 15, 2014 and a record review conducted on February 20, 2015.
3. Failed to maintain financial assurance adequate for closure of a recycling facility, in violation of 30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d), as documented during an investigation conducted on August 15, 2014 and a record review conducted on February 20, 2015. Specifically, financial assurance was not provided for approximately 24,803 cubic yards of combustible material.
4. Failed to obtain authorization for storm water discharges under the Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit associated with an industrial facility, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26, as documented during an investigation conducted on August 15, 2014 and a record review conducted on February 20, 2015. Specifically, the Respondents had not submitted a NOI to obtain coverage.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Marcelo Vera and Marcelo's, L.P., Docket No. 2015-0474-MLM-E" to:

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

2. The Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.

3. It is further ordered that the Respondents shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Agreed Order, cease accepting additional recyclable materials until such time that all requirements of an NOI for the Facility have been approved by the Executive Director;
- b. Within 30 days after the effective date of this Agreed Order, develop and implement a storm water pollution prevention plan and submit an NOI to obtain authorization to discharge storm water from the Facility, in accordance with 30 TEX. ADMIN. CODE § 281.25 and TPDES Multi-Sector General Permit No. TXR050000 to:

Texas Commission on Environmental Quality
Storm Water Processing Center, MC 228
P.O. Box 13087
Austin, Texas 78711-3087

- c. Within 60 days after the effective date of this Agreed Order, submit documentation that demonstrates acceptable financial assurance for closure of the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 37.921 and 328.5;

In lieu of Ordering Provision Nos. 3.a. through 3.c.:

- d. Within 90 days after the effective date of this Agreed Order, dispose of all recyclable materials at an authorized facility.
- e. Within 105 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a. through 3.c., or 3.d. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with copies to:

Waste Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Water Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the 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, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the 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 the Respondents shall be made in writing to the Executive Director. Extensions are not

effective until the 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 the 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. 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.
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Order is the date it is signed by the Commission or the Executive Director. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Raymond M. ...
For the Executive Director

09/14/15
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

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

In addition, any falsification of any compliance documents may result in criminal prosecution.

Mark A. Vera
Signature

7-29-2015
Date

Mark A. Vera
Name (Printed or typed)
Authorized Representative of
Marcelo Vera

Manager
Title

Mark A. Vera
Signature

7-29-2015
Date

Mark A. Vera
Name (Printed or typed)
Authorized Representative of
Marcelo's, L.P.

Manager
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.