

TCEQ Interoffice Memorandum

To: Tucker Royall, General Counsel
Greg Merrell, Assistant General Counsel

From: Elizabeth Harkrider, Staff Attorney
Litigation Division

Thru: Lena Roberts, Staff Attorney
Agenda Coordinator, Litigation Division

Kathleen Decker, Director
Litigation Division

Date: November 19, 2015

Subject: **Request for Setting on the December 9, 2015 Commission Agenda**
Order Dismissing Agreed Order concerning Donald Burkhardt
d/b/a Clearwood Recycling Center
Docket No. 2005-0959-MLM-E

Requested Commission Action

The Executive Director respectfully requests that the Commission approve the Order Dismissing Agreed Order attached hereto as "Attachment 1" (the "Proposed Order").

Background/Summary of Request

Donald Burkhardt d/b/a Clearwood Recycling Center ("Respondent") owns an unauthorized municipal solid waste ("MSW") disposal site located at 9520 Easthaven Boulevard in Houston, Harris County, Texas (the "Site").

Following an investigation at the Site on January 19 and 20, 2005, Respondent was the subject of formal enforcement in Docket No. 2005-0959-MLM-E. At its October 24, 2007 agenda meeting, the Commission approved an Agreed Order in this matter for alleged violations of the MSW and used oil provisions of TEX. HEALTH & SAFETY CODE chs. 361 and 371 and TCEQ Rules (the "Agreed Order"). A copy of the Agreed Order is attached to the Proposed Order as "Exhibit A." Prior to the October 24, 2007 agenda meeting, two State Legislators, Representative Garnet F. Coleman and Senator Mario Gallegos, and four private individuals communicated to the TCEQ an interest in bringing the Site into compliance, citing concerns of vectors, fire hazard, soil contamination, and property depreciation, among other concerns. The Agreed Order required Respondent to pay an administrative penalty in the amount of \$6,774.00 and implement technical requirements. Respondent paid the administrative penalty but failed to complete all of the technical requirements.

On July 1, 2009, on behalf of the Commission, the Office of the Attorney General ("OAG") filed suit against Respondent in District Court in pursuit of civil penalties and injunctive relief for Respondent's failure to comply with the technical requirements contained in the Agreed Order and TCEQ Rules adopted pursuant to TEX. HEALTH & SAFETY CODE chs. 361 and 371. On June 17, 2010, following a trial on the merits, the OAG, on behalf of the State of Texas, obtained a Final Judgment against Respondent in Cause No. D-1-GV-09-001190 of the 201st District Court (the "Judgment"), a copy of which is attached to the Proposed Order as "Exhibit B." The Judgment awarded to the State civil penalties and attorneys' fees totaling \$51,425 and ordered Respondent to implement technical requirements contained in the Agreed Order. Judgment liens were placed on Respondent's eligible properties in Brazoria and Harris Counties. Copies of the Abstracts of Judgment perfecting the judgment liens in Brazoria and Harris Counties are attached hereto as "Attachment 2."

TCEQ Interoffice Memorandum

On October 19, 2011, the Houston Regional Office conducted a follow-up investigation of the Site and documented that the technical requirements of the Agreed Order pertaining to the removal and proper disposal of waste from the Site, the submittal of an Affected Property Assessment Report ("APAR"), and completion of any necessary response actions remained outstanding due to the large quantity of waste that remained at the Site, as shown in the photographs attached hereto as "Attachment 3." To date, Respondent has failed to comply with all of the technical requirements contained in the Agreed Order. The Executive Director determined, upon the advice of the OAG, that further pursuit of enforcement through a contempt action would be futile due to circumstances personal to Respondent and would not constitute an efficient use of agency resources. The Executive Director has exhausted all practicable enforcement remedies available against Respondent.

U-Pull-And-Pay LLC ("Applicant") signed a Purchase and Sale Agreement with Respondent for the Site and reports that it is currently conducting due diligence activities.¹ There is no affiliation between Respondent and Applicant, nor any of its managing officers. On November 18, 2015, Applicant submitted an application to remediate the Site under the oversight of the TCEQ Remediation Division through the Voluntary Cleanup Program ("VCP"). Applicant has demonstrated a desire to invest its resources toward bringing the Site in to compliance with applicable environmental rules and regulations, even though Applicant is not responsible for the current conditions at the Site. Remediation under the oversight of the VCP will address the outstanding technical requirements contained in the Agreed Order regarding remediation of the Site.

As set forth in the attached Proposed Order, by statute a site is ineligible for remediation under the VCP if it is subject to a Commission order. The Agreed Order is still in effect, as its terms provide that it will not terminate until Respondent complies with all ordering provisions, including the still-outstanding technical requirements. Therefore, the Site is currently ineligible for remediation by Applicant under the VCP because it is subject to the Agreed Order. Upon dismissal of the Agreed Order, the Site will become eligible for remediation under the VCP.

It is the Executive Director's position that dismissal of the Agreed Order is appropriate at this time, not for the purpose of alleviating Respondent of his responsibility to complete the technical requirements contained in the Agreed Order, but for the purpose of fulfilling the TCEQ's statutory responsibility under TEX. HEALTH & SAFETY CODE chs. 361 and 371 to control all aspects of the management of MSW by all practical and economically feasible methods and to ensure reasonable management and safety standards for the handling of used oil. Dismissal of the Agreed Order will not affect the validity of the Judgment or the liens securing the civil penalties and attorney's fees awarded therein, as the Judgment is not premised on the existence of the Agreed Order. Dismissal of the Agreed Order would clear the only obstacle toward the implementation of a practical solution to ongoing violations of waste rules and regulations that have persisted for over a decade at the Site despite TCEQ enforcement efforts.

Enclosed please find the following:

Attachment 1:

Proposed Order Dismissing Agreed Order with Exhibits "A" (2007 Agreed Order) and "B" (2010 District Court Judgment)

Attachment 2:

Copies of the Abstracts of Judgment filed in Brazoria and Harris Counties

¹ Specifically, Applicant reports that an evaluation of conditions at the Site is underway and that it obtained regulatory approvals from the City of Houston pertaining to the Site.

TCEQ Interoffice Memorandum

Attachment 3:

Investigation photographs taken October 19, 2011

Respondent Contact:

Donald Burkhardt
2404 Taylor Lane
Pearland, Texas 77581

Applicant Contact:

Susan Litherland, P.E.
S.Q. Environmental, LLC
P.O. Box 1991
Austin, Texas 78767-1991
Phone: (512) 656-9445
Email: S.Litherland@SQEnv.com

Please do not hesitate to call me at (512) 239-2008 if you have any questions regarding this matter.

cc: Keith Frank, Enforcement Division
Jason Ybarra, Houston Regional Office
Vic McWherter, Public Interest Counsel
Lena Roberts, Litigation Division
Stuart Beckley, Enforcement Division
Gill Valls, Office of the General Counsel
Donald Burkhardt, Respondent
Susan Litherland, P.E., S.Q. Environmental, LLC

ATTACHMENT 1:
Proposed Order



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DONALD BURKHARDT DBA
CLEARWOOD RECYCLING CENTER;
RN102952785**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

ORDER DISMISSING AGREED ORDER

DOCKET NO. 2005-0959-MLM-E

On _____, the Texas Commission on Environmental Quality ("TCEQ" or "Commission") considered whether to dismiss the Agreed Order issued by the Commission against Donald Burkhardt d/b/a Clearwood Recycling Center ("Respondent") in TCEQ Docket No. 2005-0959-MLM-E (the "Agreed Order"). The Agreed Order resulted from an enforcement action brought under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE chs. 361 and 371. The Executive Director of the TCEQ, represented by the Litigation Division, presented this Order Dismissing Agreed Order to the Commission.

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

I. FINDINGS OF FACT

1. On October 24, 2007, the Commission approved the Agreed Order, a copy of which is attached hereto as "Exhibit A" and incorporated herein for all purposes. The Agreed Order became effective on or about November 9, 2007.
2. The Agreed Order concerned an enforcement action in which the Executive Director alleged that Respondent, as owner and operator of a recycling facility located at 9520 Easthaven Boulevard in Houston, Harris County, Texas (the "Site"), violated the municipal solid waste ("MSW") and used oil provisions of TEX. HEALTH & SAFETY CODE chs. 361 and 371, 40 C.F.R., Part 279, and TCEQ Rules.
3. The Agreed Order required Respondent to perform certain corrective actions at the Site and to pay an administrative penalty in the amount of six thousand seven hundred seventy-four dollars (\$6,774.00). Respondent paid the administrative penalty in full.
4. On June 17, 2010, following a trial on the merits in Cause No. D-1-GV-09-001190, the 201st Travis County District Court signed a final judgment (the "Judgment"), ordering Respondent to perform certain corrective actions at the Site in accordance with provisions of 30 TEX. ADMIN. CODE chs. 328 and 330 and the corrective actions required in the Agreed Order. The Judgment is attached hereto as "Exhibit B" and incorporated herein for all purposes.
5. Due to exceptional circumstances, including the old age and failing health of Respondent, the Executive Director determined that further action to compel compliance with the Agreed Order would not be productive.
6. Pursuant to Section I, Paragraph No. 10 of the Agreed Order, the Agreed Order will not terminate until Respondent demonstrates compliance with all of the terms and conditions set forth therein, which includes completion of the corrective actions.

7. Respondent has failed to comply with the corrective action ordering provisions required in the Agreed Order.
8. U-Pull-And-Pay LLC ("Applicant") submitted an application to remediate the Site under the oversight of the Voluntary Cleanup Program ("VCP") of the TCEQ Remediation Division. Remediation under the oversight of the VCP will satisfy the technical requirements of the Agreed Order that address remediation of the property.
9. The Site is currently ineligible for participation in the VCP because it is subject to the Agreed Order.
10. The Site would be eligible for participation in the VCP if the Agreed Order is terminated.
11. Applicant did not contribute to those conditions at the Site which formed the basis for the violations alleged in the Agreed Order.
12. Good cause exists to dismiss the Agreed Order for the purpose of allowing Applicant to implement proper remedial measures at the Site under the VCP.

II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 6, the Agreed Order will not terminate until Respondent completes the corrective actions required therein.
2. As evidenced by Finding of Fact No. 7, Respondent has failed to comply with the corrective action ordering provisions required in the Agreed Order.
3. As evidenced by Finding of Fact No. 8, Applicant submitted an application to remediate the Site under the oversight of the VCP.
4. As evidenced by Finding of Fact No. 9 and pursuant to TEX. HEALTH & SAFETY CODE § 361.603(a), the Site is currently ineligible for the VCP because it is subject to the Agreed Order.
5. Pursuant to TEX. HEALTH & SAFETY CODE § 361.603, the Site will become eligible for the VCP on dismissal of the Agreed Order.
6. Pursuant to TEX. HEALTH & SAFETY CODE § 361.011, the Commission is responsible for the management of MSW, and shall control all aspects of the management of MSW by all practical and economically feasible methods consistent with its powers and duties.
7. Pursuant to TEX. HEALTH & SAFETY CODE § 371.206, the Commission is responsible for ensuring reasonable management and safety standards for the handling of used oil.
8. Pursuant to TEX. HEALTH & SAFETY CODE § 361.011(c) and TEX. WATER CODE § 5.102(a), the Commission has the powers to perform any acts necessary and convenient to the exercise of its jurisdiction and powers.

III. ORDERING PROVISIONS

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

1. The Agreed Order (Docket No. 2005-0959-MLM-E) approved by the Commission on October 24, 2007, is hereby dismissed.
2. The Chief Clerk shall provide a copy of this Order Dismissing Agreed Order to each of the parties.
3. The effective date of this Order is the date it is signed by the Commission. A copy of this fully-executed Order Dismissing Agreed Order shall be provided to each of the parties.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

EXHIBIT A
Agreed Order: 2005-0959-MLM-E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING DONALD
BURKHARDT DBA CLEARWOOD
RECYCLING CENTER;
RN102952785

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2005-0959-MLM-E

I. JURISDICTION AND STIPULATIONS

At its OCT 24 2007 agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Donald Burkhardt dba Clearwood Recycling Center ("Mr. Burkhardt") under the authority of TEX. WATER CODE ch. 7, 30 TEX. HEALTH & SAFETY CODE chs. 361 and 371, and 40 CODE OF FEDERAL REGULATIONS ("CFR") ch. 279. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Burkhardt, represented by Elizabeth Burkhardt, Attorney at Law, appear before the Commission and together stipulate that:

1. Mr. Burkhardt owns and operates a recycling facility located at 9520 Easthaven Blvd., in Houston, Harris County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE chs. 361 and 371, and TCEQ rules.
3. The Commission and Mr. Burkhardt agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Burkhardt is subject to the Commission's jurisdiction.
4. Mr. Burkhardt received notice of the violations alleged in Section II ("Allegations") on or about April 27, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Burkhardt of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of six thousand seven hundred seventy-four dollars (\$6,774.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Burkhardt has paid two hundred ninety-nine dollars (\$299.00) of the administrative penalty. The remaining amount of six thousand four hundred seventy-five dollars (\$6,475.00) of the administrative penalty shall be payable in thirty-five monthly payments of one hundred eighty-five dollars (\$185.00) 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.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Burkhardt have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. 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 Mr. Burkhardt has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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

Mr. Burkhardt, as owner and operator of the Facility, is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 328.5(c)(1), (f) and (g), by failing to make available for Commission review a written cost estimate to show the cost of hiring a third party to close the Facility by disposition of all processed and unprocessed materials in accordance with applicable regulations, as reported during inspections conducted on January 19 and 20, 2005.
2. 30 TEX. ADMIN. CODE § 328.5(d), (f) and (g), by failing to make available for Commission review records that show Mr. Burkhardt established and maintained financial assurance for closure of the Facility in accordance with 30 TEX. ADMIN. CODE 37 Subchapter J (relating to

Financial Assurance for Recycling Facilities), as reported during inspections conducted on January 19 and 20, 2005.

3. 30 TEX. ADMIN. CODE § 328.5(h), by failing to make available for Commission review a copy of the Facility's fire prevention and suppression plan to the local fire prevention authority having jurisdiction over the Facility, as reported during inspections conducted on January 19 and 20, 2005.
4. 30 TEX. ADMIN. CODE § 330.5(c)¹, by failing to prevent the dumping of municipal solid waste without the written authorization of the Commission, as reported during inspections conducted on January 19 and 20, 2005.
5. 30 TEX. ADMIN. CODE § 324.6 and 40 CFR pts. 264 and 265 and § 279.22(a) and (c)(1), by failing to label or clearly mark containers containing used oil with the words "Used Oil." Specifically, it was documented that five drums and four buckets containing used oil were not properly secured with a cover or marked with the words "Used Oil," as reported during inspections conducted on January 19 and 20, 2005.
6. 30 TEX. ADMIN. CODE § 324.4(1), by failing to prevent the discharge or disposal of used oil in a manner that endangers the public health or welfare of the environment. Specifically, during the investigation, stained soils and several discharges of used oil and diesel fuel from fueling and maintenance activities adjacent to the secondary containment area and the workshop area, as reported during inspections conducted on January 19 and 20, 2005.

III. DENIALS

Mr. Burkhardt generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Burkhardt pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Burkhardt's compliance with all the terms and conditions set forth in this Agreed Order

¹ 30 TEX. ADMIN. CODE § 330.5(c) was recodified as 30 TEX. ADMIN. CODE § 330.15(c) effective March 27, 2006 by 31TexReg 2502.

resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action 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: Donald Burkhardt dba Clearwood Recycling Center, Docket No. 2005-0959-MSW" to:

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

2. Mr. Burkhardt shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease to collect, handle, store, process or dispose of additional solid waste of any kind, including but not limited to, wood material of any character, grass and leaves, until Mr. Burkhardt has met the condition under Ordering Provision 2.f., in accordance with 30 TEX. ADMIN. CODE § 330.4.
 - b. Within 30 days after the effective date of this Agreed Order Mr. Burkhardt shall:
 - i. Ensure that all used oil is stored in tanks, containers or units that are properly closed with the words "Used Oil" clearly labeled on the tanks, containers or units, as required by 30 TEX. ADMIN. CODE § 324.6 and 40 CFR § 279.22(a) and (c)(1);
 - ii. Maintain all records that are applicable to the Facility in accordance with 30 TEX. ADMIN. CODE § 328.5;
 - iii. Provide a written cost estimate to show the cost of hiring a third party to close the Facility by disposal of all processed and unprocessed materials in accordance with applicable requirements and provide documentation of adequate financial assurance, as required by 30 TEX. ADMIN. CODE § 328.5(c)(1) and (d); and

- iv. Begin removing all waste from the Facility to a permitted landfill, authorized recycling facility or an authorized mulching facility for the wood debris, in accordance with 30 TEX. ADMIN. CODE § 330.15². Mr. Burkhardt shall continue removing waste from the Facility not later than 30 days following the due date of the previous removal until all waste is removed from the Facility.

- c. Within 60 days after the effective date of this Agreed Order, Mr. Burkhardt shall submit a progress report and receipts indicating the date of removal, the amount of waste removed and the name and permit number of the landfill receiving the waste or the amount of waste removed and the name and the authorization number of the facility receiving the waste to demonstrate compliance with Ordering Provision No. 2.b.iv. The progress reports and receipts shall be submitted as described in Ordering Provision 2.g. and shall be provided no later than 60 days following the disposal date of the previous report until all waste is removed from the Facility.

- d. Within 90 days after the effective date of this Agreed Order, Mr. Burkhardt shall submit an Affected Property Assessment Report for the contaminated soil adjacent to the secondary containment area and workshop area, pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. If response actions are necessary, Mr. Burkhardt shall 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(1)); and Institutional Controls under Subchapter F.

- e. Within 105 days after the effective date of this Agreed Order, Mr. Burkhardt shall submit written certification as described in Ordering Provision No. 2.g, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 2.a. through 2.d.

- f. Within 365 days after the effective date of this Agreed Order, Mr. Burkhardt shall submit written certification as described below that all waste has been removed from the Facility and submit a written request for revocation of the Notice of Intent to Recycle, No.: 100033.

- g. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

² 30 TEX. ADMIN. CODE § 330.5 was recodified as 30 TEX. ADMIN. CODE § 330.15 effective March 27, 2006 by 31TexReg 2502.

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.

The certification shall be submitted to:

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

with a copy to:

Nicole Bealle, Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue., Ste. H
Houston, Texas 77023-1486

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

receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Burkhardt in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 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 the Order to Mr. Burkhardt, or three days after the date on which the Commission mails notice of the Order to Mr. Burkhardt, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Donald Burkhardt dba Clearwood Recycling Center
DOCKET NO. 2005-0959-MLM-E
Page 8

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Buddy Coxis
For the Commission

Blair Green
For the Executive Director

8/30/07
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 the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

Donald Burkhardt
Signature

5-22-07
Date

Donald Burkhardt
Name (Printed or typed)
Authorized representative of
Donald Burkhardt
dba Clearwood Recycling Center

OWNER
Title

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

November 6, 2007

CERTIFIED MAIL

Donald Burkhardt, Owner
Clearwood Recycling Center
2404 Taylor Lane
Pearland, Texas 77581-5744

Elizabeth Burkhardt, Attorney at Law
9821 Shadow Wood Drive
Houston, Texas 77080-7107

RE: Donald Burkhardt dba Clearwood Recycling Center
TCEQ Docket No. 2005-0959-MLM-E; MSW Registration No. 100033
Agreed Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Enforcement Coordinator or the Staff Attorney. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3319.

Sincerely,

A handwritten signature in cursive script, appearing to read "LaDonna Castañuela".

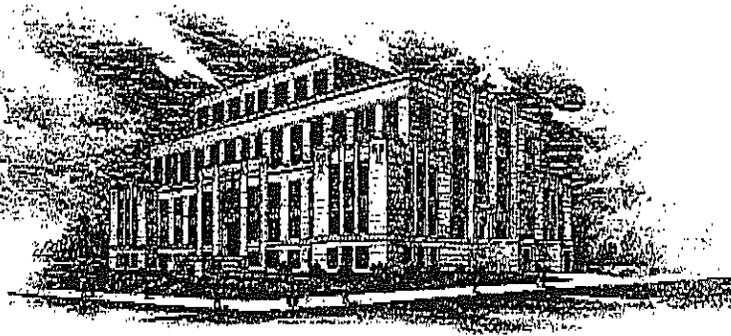
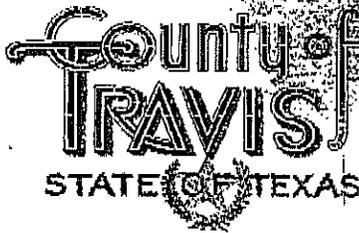
LaDonna Castañuela
Chief Clerk

LDC/lg

Enclosure

cc: Kari L. Gilbreth, Staff Attorney, TCEQ Litigation Division (MC 175)
Nicole Bealle, Regional Contact, TCEQ Houston Regional Office (MC R-12)
Sandy VanCleave, Enforcement Coordinator, TCEQ Enforcement Division (MC 169)

EXHIBIT B
Judgment: Cause No. D-1-GV-09-001190



OFFICE OF THE DISTRICT JUDGES
 Travis County Court House
 P.O. Box 1748
 Austin, Texas 78767
 (512) 854-9300

June 17, 2010

Filed in The District Court
 of Travis County, Texas

JUN 17 2010 BP

AM
 Amalia Rodriguez-Mendoza, Clerk

Mr. David Preister
 Assistant Attorney General
 Office of the Attorney General
 Environmental Protection and
 Administrative Law Division
 P.O. Box 12548, Capitol Station
 Austin, Texas 78711
Via Facsimile: (512) 320-0052

Ms. Elizabeth Ann Brukhardt
 9821 Shadow Wood Dr.
 Houston, Texas 77080
Via Facsimile: (713) 468-5932

Re: Cause No. D-1-GV-09-001190; *State of Texas vs. Donald Ray Brukhardt, Individually and d/b/a Clearwood Recycling Center*, in the 201st Judicial District, Travis County, Texas

Dear Counsel:

Enclosed please find a copy of a Final Judgment Order signed and entered this day by Judge Strauss in the above cause. The original order has been filed with the District Clerk's office. Per Judge Strauss, please provide copies to all parties of record in this case.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Herrera".

Nancy Herrera
 Judicial Aide
 Civil District Courts

Orig: Ms. Amalia Rodriguez-Mendoza, Travis County District Clerk

2. Maintain all records that are applicable to the site in accordance with 30 Tex. Admin. Code § 328.5.
3. Within 30 days of the signing of this judgment, provide documentation to TCEQ of adequate financial assurance as required by 30 Tex. Admin. Code § 328.5 (d), (f), and (g).
4. Within 30 days of the signing of this judgment, begin removing all waste from the site to a permitted landfill, authorized recycling facility or an authorized mulching facility in accordance with 30 Tex. Admin. Code § 330.15.
5. Within 60 days of the signing of this judgment, submit to TCEQ a progress report and receipts indicating the date of removal, the amount of waste removed and the name and permit number of the landfill receiving the waste, or the amount of waste removed and the name and authorization number of the facility receiving the waste. The progress reports and receipts shall be submitted as described in the TCEQ Agreed Order in Docket No. 2005-0959-MLM-E ("TCEQ Agreed Order").
6. Within 105 days of the signing of this judgment, submit written certification as described in the TCEQ Agreed Order, Provision No. 2.g, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with provisions 2.a through 2.d of the TCEQ Agreed Order.
7. Within 365 days of the signing of this judgment, submit a written certification as described in the TCEQ Agreed Order that all waste has been removed from the site and submit a written request for revocation of the Notice of Intent to Recycle, No. 100033.

II.

It is hereby ORDERED that Defendant Donald Ray Burkhardt shall pay to the State of Texas civil penalties in the total amount of Forty-Five Thousand Five Hundred Dollars (\$45,500.00).

III.

It is further ORDERED that Defendant Donald Ray Burkhardt shall pay to the State of Texas attorney's fees in the total amount of Five Thousand Nine Hundred Twenty-Five Dollars (\$5,925.00).

IV.

It is further ORDERED that Defendant Donald Ray Burkhardt shall pay to the State of Texas additional attorney's fees in the total amount of Five Thousand Dollars (\$5,000.00) in the event of an appeal of this case to the Court of Appeals.

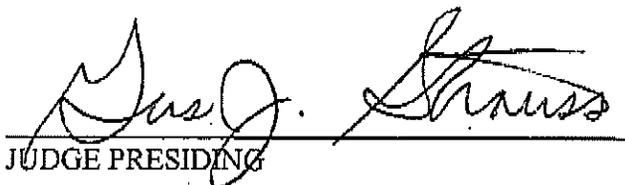
V.

It is further ORDERED that Defendant Donald Ray Burkhardt shall pay to the State of Texas additional attorney's fees in the total amount of Five Thousand Dollars (\$5,000.00) in the event of an appeal of this case to the Texas Supreme Court.

VI.

It is further ORDERED that the State of Texas shall recover all costs of Court expended in this cause.

SIGNED this 17 ^{June,} day of ~~May~~, 2010.


JUDGE PRESIDING

ATTACHMENT 2:
Abstracts of Judgment

OFFICE OF THE ATTORNEY GENERAL

David Preister

DAVID PREISTER

Assistant Attorney General

State Bar No. 16245800

Environmental Protection and
Administrative Law Division

P.O. Box 12548, MC 018

Austin, Texas 78711-2548

Tel: (512) 463-2012

Fax: (512) 320-0052

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, a Notary for the State of Texas, on this day personally appeared David Preister, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on the 28th day of March, 2010.



Gregoria A Banda
Notary Public for the State of Texas
My commission expires: 11/31/2012

PLEASE RETURN TO:

David Preister, Assistant Attorney General
Office of the Attorney General
Environmental Protection and
Administrative Law Division
P.O. Box 12548
Austin, Texas 78711-2548

Doc# 2011012638
Pages 2
03/30/2011 1:58PM
Official Public Records of
BRAZORIA COUNTY
JOYCE HUDMAN
COUNTY CLERK
Fees \$20.00

Joyce Hudman

2
AJ
KAD

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

ABSTRACT OF JUDGMENT

I, the undersigned, hereby certify that in a certain suit pending in the 201st Judicial District Court of Travis County, Texas, Cause No. D-1-GV-09-001190, wherein the State of Texas is Plaintiff whose address is P.O. Box 12548, Austin, Texas 78711, and Donald Ray Burkhardt, Individually and d/b/a Clearwood Recycling Center is Defendant; Plaintiff the State of Texas, recovered a Final Judgment on June 17, 2010, against the Defendant. 10R
2 ee

Defendant's address is as follows:

Donald Ray Burkhardt, 2404 Taylor Lane, Pearland, Brazoria County, Texas 77581; whose date of birth is 02/07/1937, and whose Texas driver's license number is XXXXXXXX608.

The June 17, 2010 Final Judgment orders Defendant Donald Ray Burkhardt to pay the State of Texas the following:

1. civil penalties in the amount of FORTY-FIVE THOUSAND, FIVE HUNDRED DOLLARS (\$45,500.00);
2. attorney's fees in the amount of FIVE THOUSAND, NINE HUNDRED AND TWENTY-FIVE DOLLARS (\$5,925.00); and
3. court costs to the State of Texas against Defendant Donald Ray Burkhardt in the amount of TWO HUNDRED AND FORTY-SEVEN DOLLARS AND TEN CENTS (\$247.10).

The Final Judgment is recorded in book number BK 10174 at page number 1635 of the records of said Court. The Final Judgment described herein is entitled to no credits. There is now still due the amounts set out above.

I hereby verify in accordance with § 52.002 of the Texas Property Code that the foregoing is true and correct.

OFFICE OF THE ATTORNEY GENERAL

David Preister

DAVID PREISTER
Assistant Attorney General
State Bar No. 16245800

3918-68-568
RP 095-09-0763

Travis County

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned Notary Public, on this date personally appeared David Preister, who, being by me duly sworn upon oath, said that he had read and signed the foregoing Abstract of Judgment and that all the facts stated in it are within his personal knowledge and are true and correct.

TO CERTIFY WHICH, witness my hand and official seal on the 20th day of September, 2015.



Notary without Bond

Elizabeth Martinez

Notary Public for the State of Texas
My commission expires: 2/15/16

PLEASE RETURN TO:
David Preister
Office of the Attorney General
Environmental Protection Division ✓✓
P.O. Box 12548 - MC 066
Austin, Texas 78711-2548

HP 095-09-0764

5928-68-558 11

FILED FOR RECORD
8:00 AM

OCT -5 2015

Stan Stewart
County Clerk, Harris County, Texas

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL
PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time
stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris
County, Texas

OCT -5 2015



Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

ATTACHMENT 3:
Investigation Photographs taken October 19, 2011



**Clearwood Recycling Center
Unauthorized Site No.: 455120101,
Notification for Recycling ID No.:
100033**

The image to the right is an aerial picture of Clearwood Recycling Center obtained from Google Earth. This image is presented on each of the following pages with a yellow arrow which documents the direction and general area of photographs taken during the investigation.

The satellite imagery is dated March 10, 2011. The site conditions during the October 19, 2011 are not identical to the satellite image but very similar and is used as reference.



Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Wood Piles. This is also the area where a dozer was observed spreading and separating vegetative/wood debris from soil.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Clay excavated from the site. This material is sold and used as clean fill dirt.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Main in plant road. Wood piles can be seen to the left and straight ahead in this picture.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Clean fill dirt excavated from the site on the left side of the picture and wood piles center and to the right side of the picture.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Pile of broken concrete and standing concrete wall.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Wood Pile overgrown with vegetation. Some broken concrete is also located throughout the pile.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Broken and unbroken pieces of concrete in the center of the photo. To the left of this picture is a wood pile.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Wood pile overgrown with vegetation.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Concrete cover where processing equipment is stored. A wood pile is located to the left of this picture.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Wood pile on the left side and five concrete K-rails on the right side of the photo

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Wood piles overgrown with vegetation.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Wood piles in the background. Clay excavation pit in the right side foreground.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Clay excavation pit. This pit is backfilled with the soil separated out from the wood piles on-site.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Clay excavation pit. The darker material is the backfilled soil that has been separated from the wood pile. The backfill does contain some wood material. The pit is partially filled with water after a recent rainfall event.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Actively backfilling the excavation pit.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Shingle pile.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Shingle pile.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Wood piles.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Wood piles.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Wood piles. Shingle pile can be seen in the background.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Wood piles.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Wood piles.

Photographic Documentation

Picture taken by Elijah Gandee on October 19, 2011

Clearwood Recycling Center, 9520 Easthaven Boulevard, Houston (Harris County), Texas

Unauthorized Site No.: 455120101, Notification for Recycling ID No.: 100033



Wood pile on the left side. Pile of concrete K-rails on the right side

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EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 25608
Donald Burkhardt d/b/a Clearwood Recycling Center
RN102952785
Docket No. 2005-0959-MLM-E

Order Type:

Order Dismissing Agreed Order

Media:

MSW and Used Oil

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

9520 Easthaven Boulevard, Houston, Harris County

Type of Operation:

unauthorized disposal site

Other Significant Matters:

Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None

Other: An Agreed Order for this case was approved by the Commission on October 24, 2007. Respondent paid the administrative penalty but failed to perform the technical requirements, and the Office of the Attorney General ("OAG") filed a civil enforcement suit on behalf of the Commission on July 1, 2009. Following a trial on the merits, a final judgment was issued against Donald Burkhardt ("Respondent") on June 17, 2010, ordering compliance with the Agreed Order's technical requirements and payment of \$45,500.00 in civil penalties to the State of Texas. A judgment lien was perfected against eligible property owned by Respondent by the filing of Abstracts of Judgment in the official public records of Brazoria and Harris Counties. The ED has exhausted all practical remedies against Respondent to compel compliance with the Agreed Order's outstanding technical requirements to no avail. Due to circumstances personal to Respondent, additional enforcement remedies typically available to the ED are impracticable in this case. The Executive Director has determined, upon the advice of the OAG, that further pursuit of enforcement through a contempt action would be futile, and would not constitute an efficient use of agency resources. The Agreed Order is still in effect.

Prior to October 14, 2015, U-Pull-And-Pay LLC ("Applicant") contracted to purchase the Site. On November 18, 2015, Applicant submitted its application to remediate the Site under the State's Voluntary Cleanup Program ("VCP"). By statute, Applicant may not be accepted into the VCP if the Agreed Order continues to be in effect. If Applicant is accepted for the VCP, Applicant will address the outstanding technical requirements contained in the Agreed Order regarding remediation of the Site. There is no affiliation between Respondent and Applicant, nor any of its managing officers. Applicant did not contribute to the violations or the contamination at the Site.

Interested Third-Parties: U-Pull-And-Pay LLC

Texas Register Publication Date: November 6, 2015

Comments Received: None

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 25608
Donald Burkhardt d/b/a Clearwood Recycling Center
RN102952785
Docket No. 2005-0959-MLM-E

Technical Requirements in the Agreed Order Which Remain Outstanding:

1. Removal of all waste from the Site to a permitted landfill, authorized recycling facility, or an authorized mulching facility for the wood debris; and
2. Submission of an Affected Property Assessment Report for the contaminated soil adjacent to the secondary containment and workshop areas.

Contact Information

TCEQ Attorneys: Elizabeth Harkrider, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Vic McWherter, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Keith Frank, Enforcement Division, (512) 239-2545

TCEQ Regional Contact: Jason Ybarra, Houston Regional Office, (713) 767-3500

Respondent Contact: Donald Burkhardt, 2404 Taylor Lane, Pearland, Texas, 77581

Applicant Contact: Susan Litherland, P.E., S.Q. Environmental, LLC, P.O. Box 1991, Austin, Texas 78767-1991; s.litherland@sqenv.com