



CANTRELL
McCULLOCH
INCORPORATED

PROPERTY TAX CONSULTANTS

12750 Merit Drive, Suite 400
Dallas, Texas 75251
214-368-5566 / Fax 214-368-2120

September 17, 2010

Attn: Chief Clerk, Mail Code 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

CMRRR# 7010 0290 0003 6798 9878

Re: Appeal of negative use determination, Application number 14259 for:
Encore Wire Corporation
McKinney Facility
1329 Millwood Road
McKinney (Collin County), TX

On behalf of Encore Wire Corporation, and pursuant to TCEQ rules 30 TAC 17.25, please accept this as our written appeal of the negative determination for the two Excel Model EX63 Balers in the above referenced use determination application. We are requesting reconsideration of these two pieces of equipment for a positive use determination based on the fact that the installation of this equipment were directly related to complying with 30 TAC Parts 335.4 (Industrial Solid Waste) and 335.473 (pollution prevention – source reduction/waste minimization) to reduce the release of reportable TRI chemicals into the environment (see attachment A for detailed explanation).

The TCEQ has historically issued positive use determinations without the requirement that the baler be directly referenced or listed in a rule. Rather, the decisions appear to be based on the TCEQ's assessment that the balers are used as a means to implement the "pollution control" intent of a regulatory requirement, e.g., pollution prevention/reduction.

Please notify me of any additional information you require for reconsideration. Please mail any hearing notices to my attention at Cantrell McCulloch, Inc., 12750 Merit Drive, Suite 400, Dallas, TX 75251. If you have questions and would like to contact me, please call me at 972-630-6685.

Thank you for your assistance and consideration.

Sincerely,
CANTRELL McCULLOCH, INC.

DAVID M. MILAN

Enclosure

CHIEF CLERKS OFFICE

2010 SEP 20 PM 2:14

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Attachment A

A. TCEQ'S POLLUTION PREVENTION RULE (see below).....Pollution Prevention Plans, 30 TAC §335.474; Reports and Recordkeeping, 30 TAC §335.476

This rule requires facilities such as Encore which is a small quantity generator and a TRI reporter (see B below) to implement 5-year plans for source reduction and waste minimization activities....the Plan targets hazardous waste and TRI chemical releases. Encore must file a report every year on its pollution prevention progress.

As indicated in "B" below, the baler affects "TRI" chemicals at Encore. Among the materials that the baler recycles is PVC stripping which contains lead (as an impurity in the fire retardant portion of the PVC) and antimony compounds (as the active component of the fire retardant in the PVC).....these are 2 of the toxic chemicals that Encore reports every year on the TRI report.

<u>TITLE 30</u>	ENVIRONMENTAL QUALITY
<u>PART 1</u>	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
<u>CHAPTER 335</u>	INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE
<u>SUBCHAPTER Q</u>	POLLUTION PREVENTION: SOURCE REDUCTION AND WASTE MINIMIZATION

B. POLLUTION PREVENTION ACT OF 1990 (see below); §13106(a). Source reduction and recycling data collection.....(a) Reporting requirements (see excerpt below)

The Pollution Prevention Act of 1990 requires that facilities which are required to file a Toxics Release Inventory (TRI) report to include in this report source reduction and recycling activities that were implemented to reduce the release of a reportable TRI chemical into the environment.

Among the materials that the baler recycles is PVC stripping which contains lead (as an impurity fire retardant portion of the PVC) and antimony compounds (as the active component of the fire retardant in the PVC).....these are 2 of the toxic chemicals that Encore reports every year on the TRI report.

Pollution Prevention Act of 1990

UNITED STATES CODE TITLE 42 THE PUBLIC HEALTH AND WELFARE CHAPTER 133

POLLUTION PREVENTION

§ 13106. Source reduction and recycling data collection

(a) Reporting requirements

Each owner or operator of a facility required to file an annual toxic chemical release form under section 11023 of this title for any toxic chemical shall include with each such annual filing a toxic chemical source reduction and recycling report for the proceeding (FOOTNOTE 1) calendar year. The toxic chemical source reduction and recycling report shall cover each toxic chemical required to be reported in the annual toxic chemical release form filed by the owner or operator under section 11023(c) of this title. This section shall take effect with the annual report filed under section 11023 of this title for the first full calendar year beginning after November 5, 1990.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2000 SEP 20 PM 2:14
CHIEF CLERK'S OFFICE

Attachment A

C. TPDES GENERAL STORM WATER PERMIT TXR050000..Part III.A.5(e) (see below)

The TPDES permit requires facilities to implement Best management practices (BMPs) which are schedules of activities, prohibitions of practices, maintenance procedures, and other techniques to control, prevent or reduce the discharge of pollutants. The baler is an industry-wide accepted BMP to reduce waste formation...by reducing waste, Encore reduces the actual and potential exposure of waste to storm water as a result of outdoor handling and storage. Encore also reduce landfill waste and storm water exposure.

Multi Sector General Permit TPDES General Permit No. TXR050000

Part III. Permit Requirements and Conditions Common to all Industrial Activities

Section A. Minimum Storm Water Pollution Prevention Plan (SWP3) Requirements

5. Pollution Prevention Measures and Controls

(e) Best Management Practices (BMPs): A section within the SWP3 shall be developed to establish BMPs to reduce the discharge and potential discharge of pollutants in storm water. Development of BMPs shall be based on the activities and potentials for contamination that are identified in Part III.A.4. of this general permit, "Description of Potential Pollutants and Sources."