

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 21, 2010

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Encore Wire Corporation  
TCEQ Docket No. 2010-1585-MIS-U; Use Determination No. 14259.  
Executive Director's Response to Encore Wire Corporation's Appeal of the Executive Director's Negative Use Determination

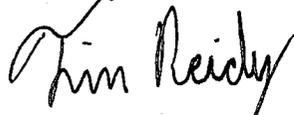
Dear Ms. Castañuela:

Enclosed for filing, please find an original and 7 copies of the *"Executive Director's Response to Encore Wire Corporation's Appeal of the Executive Director's Negative Use Determination."* I have also attached the following exhibits to assist the Commission in the resolution of this matter:

- Exhibit 1      Encore Wire's Original use Determination Application No. 14259, received February 10, 2010
- Exhibit 2      Administrative Notice of Deficiency (NOD), dated April 13, 2010
- Exhibit 3      Encore Wire's First Revised Use Determination Application No. 14259
- Exhibit 4      Second Administrative NOD, dated June 15, 2010
- Exhibit 5      Encore Wire's Second Revised Use Determination Application No. 14259, received July 19, 2010
- Exhibit 6      Email from Ronald Hatlett to David M. Millan, dated July 20, 2010 and Email Response from David M. Milan, dated August 5, 2010

Please file stamp these documents and return one complete set to Timothy J. Reidy, Staff Attorney, Environmental Law Division, MC 173. If you have any questions, please do not hesitate to contact me at (512) 239-0969.

Sincerely,

A handwritten signature in black ink that reads "Tim Reidy". The signature is written in a cursive style with a large, stylized initial "T".

Timothy J. Reidy, Staff Attorney  
Environmental Law Division

**TCEQ DOCKET NO. 2010-1585-MIS-U  
USE DETERMINATION NO. 14259**

<b>APPEAL OF THE EXECUTIVE</b>	<b>§</b>	<b>BEFORE THE</b>
<b>DIRECTOR'S NEGATIVE USE</b>	<b>§</b>	
<b>DETERMINATION ISSUED TO</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>ENCORE WIRE CORPORATION</b>	<b>§</b>	
<b>APPLICATION NO. 14259</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**EXECUTIVE DIRECTOR'S RESPONSE TO ENCORE WIRE  
CORPORATION'S APPEAL OF THE EXECUTIVE DIRECTOR'S NEGATIVE  
USE DETERMINATION**

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this response to the appeal of the Executive Director's negative use determination issued to Encore Wire Corporation (Encore Wire). The appeal was submitted by David M. Milan, Cantrell McCulloch, Inc., on behalf of Encore Wire.

For the reasons described below, the Executive Director respectfully requests that the Commission deny Encore Wire's appeal and affirm the Executive Director's negative use determination.

**PROGRAM BACKGROUND**

This appeal of the Executive Director's negative use determination is filed pursuant to H.B. 3121 (77<sup>th</sup> Tex. Legislature, 2001) establishing an appeals process for use determinations and the Commission rules implementing the legislation.<sup>1</sup>

In 1993, the citizens of Texas voted to adopt a tax measure called Proposition 2. Proposition 2 was implemented when Article VIII, § 1-1 was added to the Texas Constitution on November 2, 1993. The amendment allowed the legislature to "exempt from ad valorem taxation all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution."

The Texas Legislature codified the constitutional amendment in 1993 as Tex. Tax Code § 11.31 (effective January 1, 1994). The statutory language in the codified version mirrored the language of Article VIII, § 1-1. In 2001, the legislature amended Section 11.31 when it passed H.B. 3121 (effective September 1, 2001). This bill added several new procedural requirements to § 11.31, including a provision requiring the

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<sup>1</sup> Tex. Tax Code § 11.31 and 30 Tex. Admin. Code (30 TAC) § 17.25.

establishment and implementation of a process to appeal use determinations.<sup>2</sup> The amendment also required the Commission to adopt new rules establishing specific standards for the Executive Director to follow in making use determinations for property that qualified for either full or partial pollution control use determinations.<sup>3</sup> Appeals under Section 17.25 of the Commission rules may be filed by either the applicant seeking the determination, or by the chief appraiser of the tax appraisal district affected by the determination.<sup>4</sup> The Appellant is required to explain the basis for the appeal.<sup>5</sup>

### **PROCEDURAL BACKGROUND**

Encore Wire manufactures commercial and residential building wire. On February 10, 2010, Encore Wire filed a Tier I application requesting a 100% positive use determination for building improvements to two containment buildings, two evaporators, two baghouses, two shredders, and two balers installed at its McKinney Manufacturing Facility.<sup>6</sup> Encore Wire cited 30 TAC Chapters 101, 106, 307, 308, and 328 as the environmental rules or regulations being met by the construction or installation of the equipment.<sup>7</sup> On April 13, 2010, Executive Director staff issued an administrative Notice of Deficiency (NOD), requesting that Encore Wire: (1) divide the equipment into separate applications, (2) provide a process flow diagram, plot plan, or drawing showing the location of each piece of equipment, (3) provide a description of each piece of equipment, (4) provide a citation to the specific rule section and subsection that requires the installation and use of each piece of equipment, and (5) provide an original and copy of the revised applications, as required by 30 TAC § 17.10(a)(1).<sup>8</sup>

On May 18, 2010, Encore Wire submitted a revised Tier I application requesting a 100% positive use determination for a baler installed at its McKinney Manufacturing Facility.<sup>9</sup> In its revised application, Encore Wire cited 30 TAC §§ 335.4 and 335.473, the Pollution Prevention Act of 1990, and Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), Section 402 of the Clean Water Act (CWA), and Chapter 26 of the Texas Water Code (TWC) as the environmental rules or regulations being met or exceeded by the construction or installation of the baler.<sup>10</sup> In its revised application, Encore Wire submitted a process flow diagram and printouts from the baler manufacturer's website.<sup>11</sup> On June 15, 2010, Executive Director staff issued a second administrative NOD, stating that "[n]one of the listed rules require the recycling

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<sup>2</sup> Tex. Tax Code § 11.31(e) and 30 TAC § 17.25.

<sup>3</sup> Tex. Tax Code § 11.31(g).

<sup>4</sup> Tex. Tax Code § 11.31(e) and 30 TAC § 17.25(a)(2).

<sup>5</sup> 30 TAC § 17.25(b)(5).

<sup>6</sup> See Encore Wire's Original Use Determination Application No. 14259, received February 10, 2010 (Attached as **ED's Exh. #1**).

<sup>7</sup> *Id.* at p. 4.

<sup>8</sup> See Administrative Notice of Deficiency (NOD), dated April 13, 2010 (Attached as **ED's Exh. #2**).

<sup>9</sup> See Encore Wire's First Revised Use Determination Application No. 14259, received May 18, 2010 (Attached as **ED's Exh. #3**).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

of waste materials;” and asking Encore Wire to provide a citation to the appropriate subsection of the adopted environmental rule requiring the installation of the baler.<sup>12</sup>

On July 19, 2010, Encore Wire submitted another revised Tier I application; seeking a 100% positive use determination for a baler installed at its McKinney Manufacturing Facility.<sup>13</sup> In its second revised application, Encore Wire cited 30 TAC §§ 335.4 and 335.473, the Pollution Prevention Act of 1990, and EPCRA § 313.<sup>14</sup> Encore Wire also included, as “Attachment A” to its second revised application, a document discussing the applicability of the cited rules and regulations.<sup>15</sup> In Attachment A, Encore Wire also contended that the installation of the baler met or exceeded 30 TAC §§ 335.474 and 335.476, and was necessary in order to operate under Texas Pollutant Discharge Elimination System (TPDES) General Storm Water Permit No. TXR050000.<sup>16</sup> On July 20, 2010, Executive Director staff sent an email to Mr. David M. Milan, Encore Wire’s designated contact, which stated “[w]hile some of the listed rules and laws encourage recycling, none require the installation or use of this baler.”<sup>17</sup> Please provide a citation to the subsection of an adopted environmental rule or regulation which requires the installation and use of the baler.” On August 5, 2010, Mr. Milan responded to the email, citing the Pollution Prevention Act of 1990 as the applicable environmental rule.<sup>18</sup> On August 30, 2010, the Executive Director issued a negative use determination on the basis that Encore Wire failed to cite to an appropriate adopted environmental rule requiring the installation of the baler.<sup>19</sup> On September 20, 2010, Encore Wire timely filed its appeal with the TCEQ’s Office of the Chief Clerk.<sup>20</sup>

### **PROPERTY DESCRIPTION**

A baler is a piece of industrial equipment that is used to shred and compact waste materials. In this case, Encore Wire has indicated that the baler will be used to “compress scrap nylon, cardboard, and scrap PVC to be recycled.”<sup>21</sup>

### **APPELLANT’S CLAIM**

Encore Wire contends that the installation of the baler was “directly related to complying with 30 TAC Parts 335.4 (Industrial Solid Waste) and 335.473 (pollution prevention –

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<sup>12</sup> See Second Administrative NOD, dated June 15, 2010 (Attached as **ED’s Exh. #4**).

<sup>13</sup> See Encore Wire’s Second Revised Use Determination Application No. 14259, received July 19, 2010 (Attached as **ED’s Exh. #5**).

<sup>14</sup> *Id.* at p. 3.

<sup>15</sup> See Attachment A, Encore Wire’s Second Revised Use Determination Application No. 14259, received July 19, 2010 (Attached as **ED’s Exh. #5**).

<sup>16</sup> *Id.*

<sup>17</sup> See Email from Ronald Hatlett to David M. Milan, dated July 20, 2010 (Attached as **ED’s Exh. #6**).

<sup>18</sup> See Email Response from David M. Milan, dated August 5, 2010 (Attached as **ED’s Exh. #6**).

<sup>19</sup> See Use Determination No. 14259.

<sup>20</sup> See Encore Wire’s Appeal of Use Determination No. 14259, dated September 17, 2010.

<sup>21</sup> See Encore Wire’s Second Revised Use Determination Application No. 14259, p. 3, received July 19, 2010 (Attached as **ED’s Exh. #5**).

source reduction/waste minimization) to reduce the release of reportable TRI chemicals into the environment.”<sup>22</sup> Encore Wire also argues that,

“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.”<sup>23</sup>

## LEGAL ANALYSIS

### **1. THE EXECUTIVE DIRECTOR’S NEGATIVE USE DETERMINATION SHOULD BE AFFIRMED BECAUSE ENCORE WIRE FAILED TO CITE AN ENVIRONMENTAL LAW, RULE, OR REGULATION BEING MET OR EXCEEDED BY THE INSTALLATION OF THE BALER.**

In order to receive a positive use determination, an applicant must cite to a federal, state, or local environmental law, rule, or regulation being met or exceeded by the use, construction, acquisition, or installation of the property at issue.<sup>24</sup> As previously mentioned, Encore Wire contends that the baler was installed to meet or exceed 30 TAC §§ 335.4, 335.473, 335.474, and 335.476, the Pollution Prevention Act of 1990, and EPCRA § 313. Encore Wire also argues that the installation of the baler was necessary in order to operate under TPDES General Storm Water Permit No. TXR050000. 30 TAC § 335.4 is a general prohibition against the collection, handling, storage, processing, or disposal of industrial solid waste in a manner that causes: (1) the discharge or imminent threat of a discharge of industrial solid waste into or adjacent to waters in the state, (2) the creation and maintenance of a nuisance, or (3) the endangerment of the public health. Encore Wire installed a baler at its McKinney Manufacturing Facility to compact scrap nylon, cardboard, and scrap PVC so that it can be sold to recycling companies.<sup>25</sup> Encore Wire’s installation and use of the baler is unrelated to the general prohibition against the improper handling and disposal of industrial solid waste located at 30 TAC § 335.4.

Encore Wire also contends that the baler was installed to meet 30 TAC §§ 335.473, 335.474, and 335.476. These regulations, along with the remaining sections in Subchapter Q of Chapter 335, implement the Waste Reduction Policy Act (WRPA) of 1991.<sup>26</sup> The WRPA was adopted by the Texas Legislature to implement the state policy of reducing pollution at its source and minimizing the impact of pollution in order to

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<sup>22</sup> See Encore Wire’s Appeal of Use Determination No. 14259, dated September 17, 2010.

<sup>23</sup> *Id.*

<sup>24</sup> 30 TAC § 17.4(a); *Also see* Tex. Tax Code § 11.31(a) and (b).

<sup>25</sup> The flowchart attached to Encore Wire’s Second Revised Application indicates that cardboard, PVC strippings, nylon strippings, polyethylene (HDPE) strippings, and bare aluminum wire are compacted in the baler and then sold. See Encore Wire’s Second Revised Use Determination Application No. 14259, p. 3, received July 19, 2010 (Attached as **ED’s Exh. #5**).

<sup>26</sup> See Texas Health and Safety Code (THSC) §§ 361.501-361.510 and 30 TAC §§ 335.471-335.480.

reduce risk to public health and the environment and continue to enhance the quality of air, land, and waters of the state where feasible.<sup>27</sup> 30 TAC § 335.473 deals with the applicability of Subchapter Q of 30 TAC Chapter 335, Pollution Prevention: Source Reduction and Waste Minimization. 30 TAC § 335.473 provides that all large quantity generators of hazardous waste, small quantity generators of hazardous waste, and persons subject to EPCRA § 313 are required to develop a Pollution Prevention (P2) Plan in accordance with the WRPA and the regulations promulgated thereunder. 30 TAC § 335.474 provides that a Toxic Release Inventory (TRI) Form R reporter must prepare a five-year P2 Plan and submit an Executive Summary of the P2 Plan to the TCEQ. Among other things, a P2 Plan must contain: (1) a prioritized list of economically and technologically feasible source reduction and waste minimization projects, (2) a schedule for the implementation of each source reduction and waste minimization project, and (3) measurable source reduction and waste minimization goals for the entire facility. 30 TAC § 335.476 requires a TRI Form R reporter to submit annual reports detailing the facility's progress on implementing their P2 Plan. The P2 Plan must be updated and a new Executive Summary of the P2 Plan must be submitted to the TCEQ every 5 years until such time as the WRPA no longer applies to the facility.<sup>28</sup>

Encore Wire has indicated it is a small quantity generator of hazardous waste and a Form R reporter.<sup>29</sup> As previously mentioned, 30 TAC § 335.473 sets out who is required to develop a P2 Plan. Encore Wire did not meet or exceed the requirements of 30 TAC § 335.473 by installing a baler at its McKinney Manufacturing Facility. 30 TAC § 335.474 sets out the minimum elements of a P2 Plan. 30 TAC § 335.474 does not impose source reduction or waste management requirements, nor does it mandate the use of certain types of equipment, technology, or processes. Encore Wire's installation of a baler did not meet or exceed 30 TAC 335.474. 30 TAC § 335.476 requires annual reports detailing a facility's progress on implementing their P2 Plan. This reporting requirement is unrelated to Encore Wire's installation of a baler at its McKinney Manufacturing Facility.

Encore Wire cited the Pollution Prevention Act of 1990, 42 U.S.C. § 13106, as the environmental rule being met or exceeded by the installation of the baler. 42 U.S.C. § 13106 mandates that the owners or operators of facilities that are required to submit an annual TRI Form R to the U.S. EPA under EPCRA § 313 must include in that report a toxic chemical source reduction and recycling report for the preceding calendar year. The toxic chemical source reduction and recycling report must include the amount of each toxic chemical recycled during the previous calendar year and the source reduction practices used with respect to each toxic chemical during the previous calendar year.<sup>30</sup> Similar to 30 TAC § 335.474, 42 U.S.C. § 13106 does not impose recycling or source reduction requirements, nor does it mandate the use of certain types of equipment,

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<sup>27</sup> See THSC § 361.502.

<sup>28</sup> See 30 TAC §§ 335.474 and 335.476.

<sup>29</sup> See Attachment A, Encore Wire's Second Revised Use Determination Application No. 14259, received July 19, 2010 (Attached as **ED's Exh. #5**); Also see Response from David M. Milan, dated August 5, 2010 (Attached as **ED's Exh. #6**).

<sup>30</sup> 42 U.S.C. § 13106(b)(2) and (3).

technology, or processes. 42 U.S.C. § 13106 is a reporting requirement. This reporting requirement was not met or exceeded by Encore Wire's installation of a baler.

Encore Wire also contends that the installation of the baler met or exceeded EPCRA § 313.<sup>31</sup> EPCRA § 313 requires facilities included in Standard Industrial Classification (SIC) Codes 20 through 39 to submit an annual TRI, commonly referred to as Form R, to the U.S. EPA if they have 10 or more employees and if they manufacture, process, or use specified chemicals in amounts greater than certain threshold quantities.<sup>32</sup> Again, EPCRA § 313 is a reporting requirement that is unrelated to Encore Wire's installation of a baler.

Finally, Encore Wire argues that the installation of the baler was necessary in order to operate under TPDES General Storm Water Permit No. TXR050000.<sup>33</sup> TWC § 26.040 provides the TCEQ with the statutory authority to issue general permits regulating storm water discharges. Subsection 5(e), Section A, Part III of TPDES General Storm Water Permit No. TXR050000 requires that a section within the permittee's Storm Water Pollution Prevention Plan (SWP3) be developed to include Best Management Practices (BMPs) to reduce the discharge and potential discharge of pollutants in storm water.<sup>34</sup> In Attachment A of its application, Encore Wire contends that the use of the baler is an "industry-wide accepted BMP."<sup>35</sup> BMPs include schedules of activities, prohibitions of practices, maintenance procedures, and other techniques to control, prevent or reduce the discharge of pollutants.<sup>36</sup> BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spills or leaks, sludge or waste disposal, or drainage from raw material storage areas.<sup>37</sup> BMPs do not mandate the use of certain types of equipment, technology, or processes. Encore Wire was not required to install a baler in order to operate under TPDES General Storm Water Permit No. TXR050000.

Item M-4 on Part A of the Equipment and Categories List (ECL) lists "Compactors, Barrel Crushers, Balers, Shredders" as eligible for a Tier I 100% positive use determination.<sup>38</sup> The general description for Item M-4 reads, "Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste."<sup>39</sup> A number of rules and

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<sup>31</sup> 42 U.S.C. § 11023.

<sup>32</sup> *Id.*

<sup>33</sup> See Attachment A, Encore Wire's Second Revised Use Determination Application No. 14259, received July 19, 2010 (Attached as **ED's Exh. #5**).

<sup>34</sup> See TPDES Multi-Sector Industrial General Permit for Storm Water No. TXR050000, TCEQ, RG-394 (Revised), p. 31 (September 2006).

<sup>35</sup> See Attachment A, Encore Wire's Second Revised Use Determination Application No. 14259, received July 19, 2010 (Attached as **ED's Exh. #5**).

<sup>36</sup> See TPDES Multi-Sector Industrial General Permit for Storm Water No. TXR050000, TCEQ, RG-394 (Revised), p. 4 (September 2006).

<sup>37</sup> *Id.*

<sup>38</sup> See 30 TAC § 17.14(a); *Also see* Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, TCEQ, RG-461, p. 42 (September 1, 2009).

<sup>39</sup> *Id.*

regulations adopted by state, federal, and local environmental protection agencies encourage certain entities to implement source reduction and waste minimization practices. However, the Executive Director is currently aware of relatively few federal, state, or local laws, rules, or regulations that require certain entities to engage in specific source reduction and waste minimization practices.<sup>40</sup> On January 27, 2010, the Commission created the Tax Relief for Pollution Control Property Advisory Committee (Advisory Committee) to advise the Commission on the implementation of Tex. Tax Code § 11.31. At the next Advisory Committee meeting, Executive Director staff will specifically request that the Advisory Committee evaluate the current listing for Item M-4 on Part A of the ECL and the types of applicants eligible to receive a 100% positive use determination.

### CONCLUSION

After careful consideration of the appeal filed by Encore Wire on Use Determination Application Number 14259, the Executive Director concludes that its original Tier I negative use determination was not issued in error. Encore Wire has failed to provide any legal basis upon which the Commission should reverse the Executive Director's use determination in this case. The Executive Director's use determination is consistent with the terms and mandates set forth in the relevant statutes and rules. The assertions of the Appellant do not alter the findings and final negative use determination issued by the Executive Director in this case.

Accordingly, the Executive Director respectfully requests that the Commission deny the instant appeal and affirm the Executive Director's Tier I negative use determination.

Respectfully submitted,  
Texas Commission on Environmental  
Quality

Mark R. Vickery, P.G.  
Executive Director

Robert Martinez, Director  
Environmental Law Division

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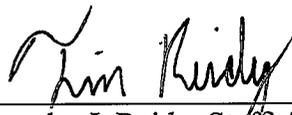
<sup>40</sup> For example, 40 CFR § 246.202-1 provides that "any commercial establishment generating 10 or more tons of waste corrugated containers per month shall separately collect and sell this material for the purpose of recycling." This source separation and materials recovery requirement is mandatory for all federal agencies that generate solid waste. 40 CFR § 246.100(b).

By   
Timothy J. Reidy, Staff Attorney  
Environmental Law Division  
State Bar No. 24058069  
P.O. Box 13087, MC 173  
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Tel: (512) 239-0969  
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REPRESENTING THE EXECUTIVE  
DIRECTOR OF THE TEXAS  
COMMISSION ON ENVIRONMENTAL  
QUALITY

**CERTIFICATE OF SERVICE**

I certify that on October 21, 2010 an original and seven copies of the "Executive Director's Response to Encore Wire's Appeal of the Executive Director's Negative Use Determination" was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was transmitted by mail, facsimile, electronic mail or hand-delivery to all persons on the attached mailing list.

  
Timothy J. Reidy, Staff Attorney  
Environmental Law Division  
State Bar No. 24058069

Mailing List

Executive Director's Response to Encore Wire Corporation's Appeal of the Executive  
Director's Negative Use Determination  
TCEQ Docket No. 2010-1585-MIS-U  
Use Determination Application No. 14259

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Fax: 512/239-1794

Kyle Lucas  
TCEQ Alternative Dispute Resolution,  
MC 222  
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Austin, Texas 78711-3087  
Tel: 512/239-4010  
Fax: 512/239-4015

**ED's Exhibit #1 – Encore Wire's  
Original Use Determination  
Application No. 14259, received  
February 10, 2010**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
APPLICATION FOR USE DETERMINATION  
FOR POLLUTION CONTROL PROPERTY

RECEIVED

FEB 10 2010

AIR QUALITY  
DIVISION

The TCEQ has the responsibility to determine whether a property is a pollution control property. A person seeking a use determination must complete the attached application or a copy or similar reproduction. For assistance in completing this form refer to the TCEQ guidelines document, *Property Tax Exemptions for Pollution Control Property*, as well as 30 TAC §17, rules governing this program. For additional assistance please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100. The application should be completed and mailed, along with a complete copy and the appropriate fee, to TCEQ, 214, Cashiers Office, PO Box 13088, Austin, Texas 78711-3088.

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MAY 18 2010

AIR QUALITY  
DIVISION

Information must be provided for each field unless otherwise noted.

1. GENERAL INFORMATION

A. What is the type of ownership of this facility?

- Corporation
- Partnership
- Limited Partnership
- Sole Proprietor
- Utility
- Other:

B. Size of company: Number of Employees

- 1 to 99
- 100 to 499
- 500 to 999
- 1,000 to 1,999
- 2,000 to 4,999
- 5,000 or more

C. Business Description: (Provide a brief description of the type of business or activity at the facility)

Pure copper wire drawing, insulating and jacketing; plastic pellet production; copper melting and casting

2. TYPE OF APPLICATION

- Tier I \$150 Fee
- Tier II \$1,000 Fee
- Tier III \$2,500 Fee
- Tier IV \$500 Fee

NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt along with the application to cover the required fee.

3. NAME OF APPLICANT

A. Company Name: Encore Wire Corporation

B. Mailing Address (Street or P.O. Box): 1329 Millwood Rd.

C. City, State, and Zip: McKinney, TX 75069

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of Facility or Unit: McKinney Facility

B. Type of Mfg. Process or Service: Copper wire drawing, insulating and jacketing; plastic pellet production; copper melting and casting, finished goods warehousing

C. Street Address: 1329 Millwood Road

D. City, State, and Zip: McKinney, TX 75069

E. Tracking Number (Optional): 01-31-10 Tier1

F. Company or Registration Number (Optional): \_\_\_\_\_

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R016766  
MAY 18 2010

14259

5. **APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY**

A. Name of Appraisal District: Collin Central Appraisal District  
 B. Appraisal District Account Number: 1966596

**RECEIVED**

6. **CONTACT NAME**

A. Company/Organization Name: Cantrell McCulloch, Inc.  
 B. Name of Individual to Contact: David M. Milan  
 C. Mailing Address (Street or P.O. Box): 12750 Merit Drive, Suite 400  
 D. City, State, and Zip: Dallas, TX 75251  
 E. Telephone number and fax number: 972-630-6685 : Fax 214-594-9993  
 F. E-Mail address (if available): dmilan@cmi-tax.com

MAY 18 2010

**AIR QUALITY  
DIVISION**

7. **RELEVANT RULE, REGULATION, OR STATUTORY PROVISION**

For each media, please list the specific environmental rule or regulation that is met or exceeded by the installation of this property.

MEDIUM	Rule/Regulation/Law
Air	30 TAC Part 1 Chapter 101, 106
Water	30 TAC Part 1 Chapter 307, 308, 328
Waste	30 TAC Part 1 Chapter 328

8. **DESCRIPTION OF PROPERTY (Complete for all applications)**

Describe the property and how it will be used at your facility. **Do not simply repeat the description from the Equipment & Categories List.** Include sketches of the equipment and flow diagrams of the processes where appropriate. Use additional sheets, if necessary.  
See Attached list

Land: If a use determination is being requested for land, provide a legal description and an accurate drawing of the property in question.

9. **PARTIAL PERCENTAGE CALCULATION**

This section is to be completed for Tier III and IV applications. For information on how to conduct the partial percentage calculation, see the application instructions document. Attach calculation documents to completed application.

10. **PROPERTY CATEGORIES AND COSTS**

List each control device or system for which a use determination is being sought. Provide additional attachments for more than 3 properties.

Property	Taxable on 1/01/94?	DFC Box	ECL #	Estimated Cost	Use %
Land					
Property (See Attached List)	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
Totals					

11. **EMISSION REDUCTION INCENTIVE GRANT**

(For more information about these grants, see the Application Instruction document).

Will an application for an Emission Reduction Incentive Grant be filed for this property/project?

Yes  No

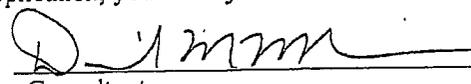
**RECEIVED**  
MAY 18 2010  
**AIR QUALITY DIVISION**

12. **APPLICATION DEFICIENCIES**

After an initial review of the application, the TCEQ may determine that the information provided with the application is not sufficient to make a use determination. The TCEQ may send a notice of deficiency, requesting additional information that must be provided within 30 days of the written notice.

13. **FORMAL REQUEST FOR SIGNATURE**

By signing this application, you certify that this information is true to the best of your knowledge and belief.

Name:  Date: 1/31/2010  
Title: Consultant  
Company: Cantrell McCulloch, Inc.

Under Texas Penal Code, Section 37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine up to \$2,000, or a prison term of two to 10 years and a fine of up to \$5,000.

14. **DELINQUENT FEE/PENALTY PROTOCOL**

This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol. (Effective September 1, 2006)

Encore Wire Corporation Pollution Control Property

Asset No.	Acq. Date	Location	Property Type	Property Description	Was this Property Taxable or Before 01/84?	DFC Box Number	ECL Number	Cost	Partial %	Adj. Cost	Description of Use
3295-002	9/2/2009	Evaporator Building	RE	East Evaporator - Building Improvements	N	12	W-76	1,217,975	100	1,217,975	Containment building around process waste water evaporator to prevent exposure of evaporator process to the elements and minimize potential fugitive discharge of wastewater into surface and ground water.
3295	5/29/2009	Evaporator Building	BPP	East Evaporator	N	12	W-58	488,419	100	488,419	Evaporate process waste water to remove particulate solids and reduce or eliminate the discharge of waste water to the city.
3296-001	9/3/2009	Evaporator Building	RE	West Evaporator - Building Improvements	N	12	W-76	1,750,278	100	1,750,278	Containment building around process waste water evaporator to prevent exposure of evaporator process to the elements and minimize potential fugitive discharge of wastewater into surface and ground water.
3296	6/1/2009	Evaporator Building	BPP	West Evaporator	N	12	W-58	533,458	100	533,458	Evaporate process waste water to remove particulate solids and reduce or eliminate the discharge of waste water to the city.
3388	12/1/2009	Rod Mill Pit 3	BPP	Rod Mill-Baghouse Equipment	N	12	A-1	2,119,349	100	2,119,349	To capture metal particulates from melting pure copper.
3388-001	12/31/2009	Rod Mill Pit 3	BPP	Rod Mill-Baghouse Equipment	N	12	A-1	102,203	100	102,203	To capture metal particulates from melting pure copper.
3263	2/10/2009	Rod Mill Pit 3	BPP	Chop Line Shredder Head Assembly	N	12	M-4	342,014	100	342,014	Shredding, scap copper for recycling.
3263-001	3/27/2009	Rod Mill Pit 3	BPP	Chop Line Shredder Head Assembly	N	12	M-4	7,217	100	7,217	Shredding, scap copper for recycling.
3265	2/10/2009	Plant 2	BPP	Excel Model EX63 Baler	N	12	M-4	53,552	100	53,552	Baler for cardboard, pvc, and nylon scrap to be recycled.
3265-001	3/4/2009	Plant 2	BPP	Excel Model EX63 Baler	N	12	M-4	9,110	100	9,110	Baler for cardboard, pvc, and nylon scrap to be recycled.

RECEIVED  
MAY 18 2010  
AIR QUALITY  
DIVISION

**ED's Exhibit #2 – Administrative  
Notice of Deficiency (NOD), dated  
April 13, 2010**

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 13, 2010

Mr. David M. Milan  
Consultant  
Cantrell McCulloch, Inc.  
12750 Merit Drive, Suite 400  
Dallas, Texas 75251

Re: Notice of Deficiency for Application 14259:  
Encore Wire Corporation  
McKinney Facility  
1329 Millwood Road  
McKinney (Collin County)

Dear Mr. Milan:

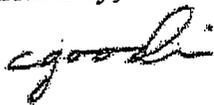
The Texas Commission on Environmental Quality (TCEQ) has conducted an administrative review for application 14259, received on February 10, 2010. To complete this review, the additional information below must be added to your application, which is being returned with this letter for this purpose. **Please submit a revised application to our office by May 16, 2010.**

1. Divide the equipment into separate applications for either separate items or for integrated systems installed to control the same pollutant. Please note, to be integrated, the pollution control systems must be connected.
2. Provide a process flow diagram, plot plan, or drawing showing the location of each piece of equipment. Provide a description of each item answering the following questions. Where is it located? How is it used? What purpose does it serve? What happens to the recovered material? What is the environmental benefit?
3. Provide a citation to the specific rule section and subsection that requires the installation and use of each piece of equipment.
4. Provide an original and copy of your revised application as required by 30 TAC §17.10(a)(1). When preparing your revised applications use the current application form which can be located at this link: <http://www.tceq.state.tx.us/implementation/air/taxrelief>.

Mr. David M. Milan  
April 13, 2010  
Page 2

The TCEQ appreciates your response in this matter. We anticipate that you will submit the revised application; however, if you do not submit an adequate response by the date indicated on this letter, your application will be voided and your application fee will be forfeited under §17.20(b). If you have any questions or require clarification, please contact Ronald Hatlett with the Tax Relief for Pollution Control Property Program at the letterhead address, Mail Code 110, by telephone at (512) 239-6348, or by e-mail at [rhatlett@tceq.state.tx.us](mailto:rhatlett@tceq.state.tx.us).

Sincerely,



Chance Goodin, Team Leader  
Stationary Source Programs  
Air Quality Division

CG/rh

Enclosure

cc: Chief Appraiser, Collin County Appraisal District, 250 W Eldarodo Parkway, McKinney,  
Texas 75069

**ED's Exhibit #3 – Encore Wire's First  
Revised Use Determination  
Application, received May 18, 2010**

*Amended Application - 14279*  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
APPLICATION FOR USE DETERMINATION  
FOR POLLUTION CONTROL PROPERTY  
TCEQ-00611

**RECEIVED**  
MAY 18 2009  
AIR QUALITY  
DIVISION

The TCEQ has the responsibility to determine whether a property is a pollution control property. A person seeking a use determination must complete the attached application or a copy or similar reproduction. For assistance in completing this form refer to *Property Tax Exemptions for Pollution Control Property* (TCEQ publication RG-461), as well as 30 TAC 17, the rules governing this program. For additional assistance, please call the Tax Relief Program at 512-239-6348. Mail the completed application, along with a complete copy for each listed appraisal district and the appropriate fee, to: Cashier's Office, MC 214, TCEQ, P.O. Box 13088, Austin, TX 78711-3088.

**You must supply information for each field unless otherwise noted.**

**1. GENERAL INFORMATION**

A. What is the type of ownership of this facility?

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Corporation | <input type="checkbox"/> Sole Proprietor |
| <input type="checkbox"/> Partnership            | <input type="checkbox"/> Utility         |
| <input type="checkbox"/> Limited Partnership    | <input type="checkbox"/> Other:          |

B. Size of Company: Number of Employees

- |  |   |
|--|---|
| <input type="checkbox"/> 1 to 99               | <input type="checkbox"/> 1,000 to 1,999 |
| <input checked="" type="checkbox"/> 100 to 499 | <input type="checkbox"/> 2,000 to 4,999 |
| <input type="checkbox"/> 500 to 999            | <input type="checkbox"/> 5,000 or more  |

C. Business Description: (Briefly describe the type of business or activity at the facility)

Pure copper wire drawing, insulating and jacketing; plastic pellet prod and copper melting

D. Your North American Industry Classification System six-digit code.

335929

**2. TYPE OF APPLICATION**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Tier I \$150 Fee | <input type="checkbox"/> Tier III \$2,500 Fee |
| <input type="checkbox"/> Tier II \$1,000 Fee         | <input type="checkbox"/> Tier IV \$500 Fee    |

*NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt along with the application to cover the required fee.*

**3. NAME OF APPLICANT**

- A. Company Name: Encore Wire Corporation
- B. Mailing Address (Street or P.O. Box): 1329 Millwood Road
- C. City, State, ZIP: McKinney, TX 75069

**4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION**

- A. Name of Facility or Unit: McKinney Mfg.
- B. Type of Mfg. Process or Service: Copper wire melting drawing, insulating and jacketing
- C. Street Address: 1329 Millwood Road
- D. City, State, ZIP: McKinney, TX 75069
- E. Tracking Number (optional): 01-31-10 TierI-Baler
- F. Company or Registration Number: \_\_\_\_\_

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY  
 A. Name of Appraisal District: Collin Central Appraisal District  
 B. Appraisal District Account Number: 1966596  
 [if not yet on tax roll, enter "new property"]

**RECEIVED**  
 MAY 16 2010  
 AIR QUALITY  
 DIVISION

6. CONTACT NAME  
 A. Company/Organization Name: Cantrell McCulloch, Inc  
 B. Name of Individual to Contact: David M. Milan  
 C. Mailing Address (Street or P.O. Box): 12750 Merit Drive, Suite 400  
 D. City, State, ZIP: Dallas, TX 75251  
 E. Phone Number and Fax Number: (972) 630-6685 ; Fax (214) 594-9993  
 F. E-Mail Address (if available): dimilan@cmi-tax.com

7. PROPERTY DESCRIPTION, APPROPRIATE RULE, AND ENVIRONMENTAL BENEFIT

For each piece, or each category, of pollution control property, answer the following questions.

A. Property Name and Equipment and Categories-List Number  
 Name the property. *Plant 2 Baler.*  
 What is the appropriate ECL number? *M-4*

Is the ECL percentage based on the incremental cost difference?  Yes  No  
 If the answer is "yes," you must answer the following questions:

1. What is the cost of the new piece of equipment?
2. What is the cost of the comparable equipment?
3. How was the value of the comparable equipment calculated?

B. Describe the property. (What is it? Where is it? How is it used?) If the property includes land or environmental paving you must include a plot plan. The requested land or paving must be highlighted and the square footage must be listed. For paving the cost of the paving per square foot must be provided.  
 Installed baler in plant 2 to compress scrap nylon, cardboard, and scrap PVC to be recycled.

C. What adopted environmental rule or regulation is being met by the construction or installation of this property?

The baler was installed in order to meet the requirements of: 1. 30 TAC 335.473 (pollution prevention - source reduction/waste minimization); 2. Pollution Prevention Act of 1990; 3. EPCRA Section 313 (TRI); 4. 30 TAC 335.4 (industrial solid waste); 5. Section 402 of Clean Water Act and Chapter 26 of Texas Water Coder (Storm Water General Permit for industrial activity; "best management practice")

D. What is the anticipated environmental benefit related to the construction or installation of the property?

The use of the baler will be used to reduce and recycle solid material waste generated in the manufacturing process.

8. **PARTIAL-PERCENTAGE CALCULATION**

This section is to be completed for Tier III and IV applications. For information on how to conduct the partial-percentage calculation, see the instructions. Attach calculations to completed application.

9. **PROPERTY CATEGORIES AND COSTS**

List each control device or system for which a use determination is being sought. Include additional attachments for more than three properties.

Property	Taxable on 1/01/94?	DFC Box	ECL #	Estimated Cost	Use %
Land					
Property Plant 2 Excel Model EX63 Baler	No	12	M-4	62,662	100%
Totals	No	12		62,662	100%

10. **EMISSION REDUCTION INCENTIVE GRANT**

(For more information about these grants, see instructions.)

Will an application for an Emission Reduction Incentive Grant be filed for this property or project?

Yes  No

11. **APPLICATION DEFICIENCIES**

After an initial review of the application, the TCEQ may determine that the information provided with the application is not sufficient to make a use determination. The TCEQ may send a notice of deficiency, requesting additional information that must be provided within 30 days of the written notice.

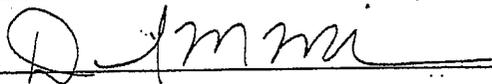
12. **SIGNATURE**

By signing this application, you certify that this information is true to the best of your knowledge and belief.

Printed Name: David M. Milan

Date: 5/13/2010

Signature



Title

Consultant

Company:

Cantrell McCulloch, Inc.

Under Texas Penal Code 37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine up to \$2,000, or a prison term of two to 10 years and a fine of up to \$5,000.

13. **DELINQUENT FEES AND PENALTIES**

This form will not be processed until all delinquent fees and penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.

General Maintenance  
Cleanup

Wire Drawing  
Machines

Drawing Solution  
Recirculation Basins

copper rod  
(99.9% pure)

Cables  
and Strands

Annealers  
(electric)

Insulating and  
Jacketing  
Extruders  
(many, essentially  
identical)

Printers  
(many, essentially  
identical)

bare,  
insulated, and  
jacketed  
copper wire  
and cable

plastic pellets (PVC, HDPE),  
colorant pellets,  
nylon pellets

ink,  
ink thinner,  
cleanup solvent

cardboard  
PVC shavings  
nylon shavings  
polyethylene (HDPE) shavings  
bare aluminum wire

Baler

→ sold

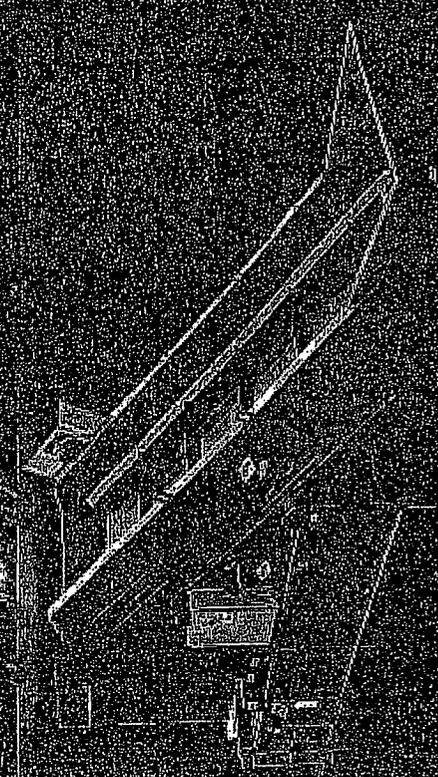
BACCUS  
ENVIRONMENTAL

Encore Wire Corporation, McKinney, TX

PROCESS FLOW DIAGRAM  
WIRE PLANTS

5.13.10

# EX62 & EX63



## Paper Baler Photos: EX62 & EX63 Series Balers

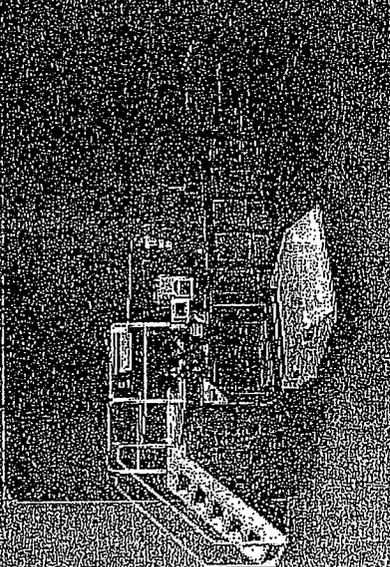
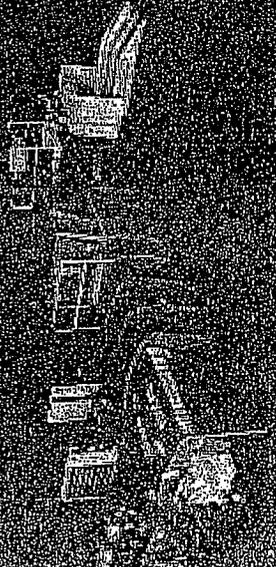


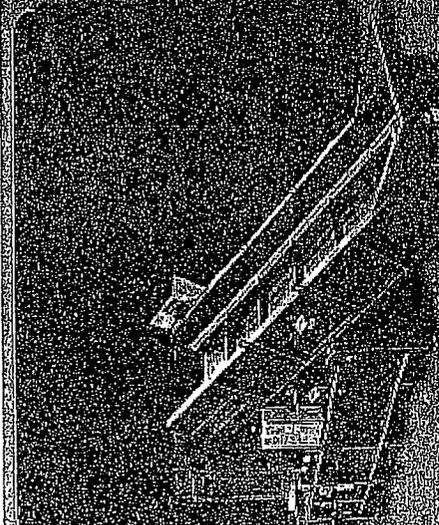
Paper Baler

Hydraulic

Hydraulic Balers

Hydraulic Balers





- Six Fully Guided Wire Tie Slots
- Automatic Bale Sizing System
- Automatic Shear Jam Correction
- Short Stroke Feature to Reduce Cycle Time
- Excel's 1-2-3 Warranty (1 Year Labor, 2 Year Parts, 3 Year Structural & Cylinder) (U.S.A. Only)
- Complete With MS32 Hydraulic Oil
- NEVA 42 rated Enclosures and Controls
- Remote Controls - According to Door Swing
- Safety Interlock Door With Decompression
- Clean out tool, Grease gun, and Extra touch up paint
- One Bundle of 17 x 13 Single Loop Wire Piles
- Sandblasted, Primed, and Painted Excel Blue for Long Lasting Durability
- Standard Hopper
- Lower Photo Eye
- UL, CEI Approved (CE Available)
- PLC Controlled Operation
- Available with an Excel above ground or in-ground conveyor for a turn key system

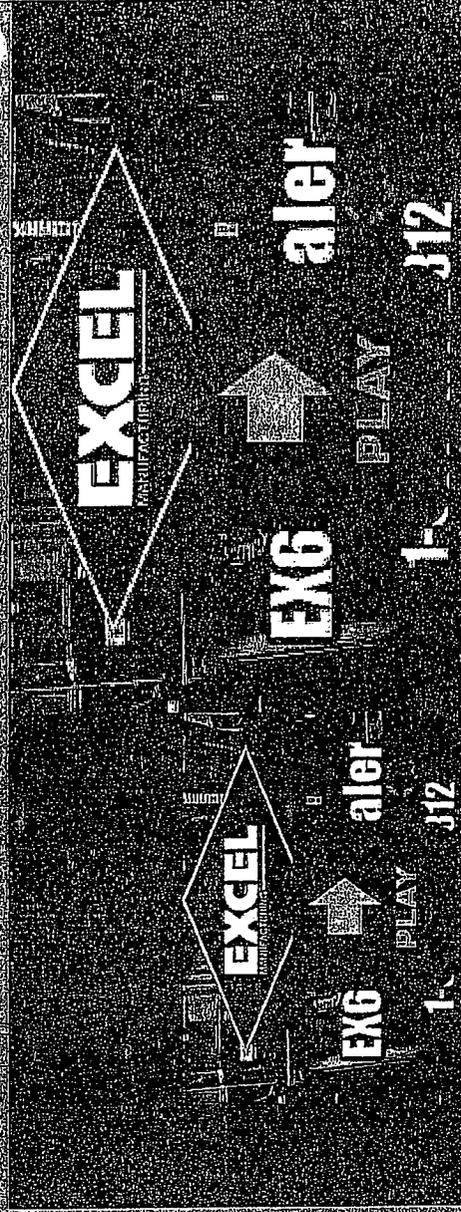
The Excel EX62 & EX63 Series Balers bale the following materials:

- Office Paper
- Newspaper
- OCC
- Magazines
- PET
- HDPE
- Aluminum Cans
- Tin Cans
- Plastic Film
- Carpet Padding
- Textiles
- Other materials

Excelsior Paper Recycling

## EX62 & EX63 Series Balers - Paper Baler Machines

The Excel EX62 & EX63 balers are designed to perform as paper recycling balers, cardboard balers, newspaper balers, aluminum can balers, tin can balers, PET balers, and TPE balers. These recycling machines operate extremely well as recycling balers for many different recyclable products. Our baling machines produce the best mill sized bales in the baling industry. Without preconditioning, Excel uses only the highest quality paper components available for ultimate performance and paper baler reliability.



### Standard Features: EX62 & EX63 Series Balers

- Hydraulic Door Latch (EX63 baler only)
- Regenerative Circuit (EX63 baler only) Reduces cycle time by 2 seconds
- The EX62 baler is manufactured standard with either left-hand or right-hand door swing
- 20 HP TEFC Motor, Standard Voltage: 208, 230, 460 Volt, 60 Hertz, 3 Phase
- Horsepower Limited Pressure Compensated Piston Pump
- Removable Shear Blade With Four Cutting Edges

**ED's Exhibit #4 – Second  
Administrative NOD, dated June 15,  
2010**

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 15, 2010

Mr. David M. Milan  
Consultant  
Cantrell McCulloch, Inc.  
12750 Merit Drive, Suite 400  
Dallas, Texas 75251

Re: Notice of Deficiency for Application 14259:  
Encore Wire Corporation  
McKinney Facility  
1329 Millwood Road  
McKinney (Collin County)

Dear Mr. Milan:

The Texas Commission on Environmental Quality (TCEQ) has conducted an administrative review for revised application 14259, received on May 18, 2010. To complete this review, the additional information below must be added to your application, which is being returned with this letter for this purpose. **Please submit a revised application to our office by July 17, 2010.**

Please provide a citation to the appropriate subsection of the adopted environmental rule requiring the installation of the baler. None of the listed rules require the recycling of waste material.

The TCEQ appreciates your response in this matter. We anticipate that you will submit the revised application; however, if you do not submit an adequate response by the date indicated on this letter, your application will be voided and your application fee will be forfeited under §17.20(b). If you have any questions or require clarification, please contact Ronald Hatlett with the Tax Relief for Pollution Control Property Program at the letterhead address, Mail Code 110, by telephone at (512) 239-6348, or by e-mail at [rhatlett@tceq.state.tx.us](mailto:rhatlett@tceq.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "cgoodin".

Chance Goodin, Team Leader  
Stationary Source Programs  
Air Quality Division

CG/rh

Enclosure

cc: Chief Appraiser, Collin County Appraisal District, 250 W Eldarodo Parkway, McKinney, Texas 75069

**ED's Exhibit #5 – Encore Wire's  
Second Revised Use Determination  
Application No. 14259, received July  
19, 2010**

SECOND REVISED APPLICATION 14259

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
APPLICATION FOR USE DETERMINATION  
FOR POLLUTION CONTROL PROPERTY  
TCEQ-00611

The TCEQ has the responsibility to determine whether a property is a pollution control property. A person seeking a use determination must complete the attached application or a copy or similar reproduction. For assistance in completing this form refer to *Property Tax Exemptions for Pollution Control Property* (TCEQ publication RG-461), as well as 30 TAC 17, the rules governing this program. For additional assistance, please call the Tax Relief Program at 512-239-6348. Mail the completed application, along with a complete copy for each listed appraisal district and the appropriate fee, to: Cashier's Office, MC 214, TCEQ, P.O. Box 13088, Austin, TX 78711-3088.

You must supply information for each field unless otherwise noted.

1. GENERAL INFORMATION

A. What is the type of ownership of this facility?

- Corporation  Sole Proprietor  
 Partnership  Utility  
 Limited Partnership  Other:

Received

JUL 19 2010

Air Quality Division

B. Size of Company: Number of Employees

- 1 to 99  1,000 to 1,999  
 100 to 499  2,000 to 4,999  
 500 to 999  5,000 or more

C. Business Description: (Briefly describe the type of business or activity at the facility)

Pure copper wire drawing, insulating and jacketing; plastic pellet prod and copper melting

D. Your North American Industry Classification System six-digit code.

335929

2. TYPE OF APPLICATION

- Tier I \$150 Fee  Tier III \$2,500 Fee  
 Tier II \$1,000 Fee  Tier IV \$500 Fee

NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt along with the application to cover the required fee.

3. NAME OF APPLICANT

- A. Company Name: Encore Wire Corporation  
B. Mailing Address (Street or P.O. Box): 1329 Millwood Road  
C. City, State, ZIP: McKinney, TX 75069

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

- A. Name of Facility or Unit: McKinney Mfg.  
B. Type of Mfg. Process or Service: Copper wire melting drawing, insulating and jacketing  
C. Street Address: 1329 Millwood Road  
D. City, State, ZIP: McKinney, TX 75069  
E. Tracking Number (optional): 01-31-10 TierI-Baler  
F. Company or Registration Number: \_\_\_\_\_

**5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY**

A. Name of Appraisal District: Collin Central Appraisal District  
 B. Appraisal District Account Number: 1966596  
 [if not yet on tax roll, enter "new property"]

**Received**  
**JUL 19 2010**

**6. CONTACT NAME**

A. Company/Organization Name: Cantrell McCulloch, Inc  
 B. Name of Individual to Contact: David M. Milan  
 C. Mailing Address (Street or P.O. Box): 12750 Merit Drive, Suite 400  
 D. City, State, ZIP: Dallas, TX 75251  
 E. Phone Number and Fax Number: (972) 630-6685 ; Fax (214) 594-9993  
 F. E-Mail Address (if available): dmilan@cmi-tax.com

**Air Quality Division**

**7. PROPERTY DESCRIPTION, APPROPRIATE RULE, AND ENVIRONMENTAL BENEFIT**

For each piece, or each category, of pollution control property, answer the following questions.

**A. Property Name and Equipment and Categories-List Number**

Name the property. *Plant 2 Baler.*  
 What is the appropriate ECL number? *M-4*

Is the ECL percentage based on the incremental cost difference?  Yes  No

If the answer is "yes," you must answer the following questions:

1. What is the cost of the new piece of equipment?
2. What is the cost of the comparable equipment?
3. How was the value of the comparable equipment calculated?

**B. Describe the property. (What is it? Where is it? How is it used?) If the property includes land or environmental paving you must include a plot plan. The requested land or paving must be highlighted and the square footage must be listed. For paving the cost of the paving per square foot must be provided.**

Installed baler in plant 2 to compress scrap nylon, cardboard, and scrap PVC to be recycled.

**C. What adopted environmental rule or regulation is being met by the construction or installation of this property? See Attachment "A" for more Detail**

The baler was installed in order to meet the requirements of: 1. 30 TAC 335.473 (pollution prevention - source reduction/waste minimization); 2. Pollution Prevention Act of 1990; 3. EPCRA Section 313 (TRI); 4. 30 TAC 335.4 (industrial solid waste);

**D. What is the anticipated environmental benefit related to the construction or installation of the property?**

The use of the baler will be used to reduce and recycle solid material waste generated in the manufacturing process.

**E. Provide a Process Flow Diagram. The diagram must show where the property is located within the process and list all inputs and outputs. Explain the disposition of the outputs.**

8. **PARTIAL-PERCENTAGE CALCULATION**

This section is to be completed for Tier III and IV applications. For information on how to conduct the partial-percentage calculation, see the instructions. Attach calculations to completed application.

9. **PROPERTY CATEGORIES AND COSTS**

List each control device or system for which a use determination is being sought. Include additional attachments for more than three properties.

Property	Taxable on 1/01/94?	DFC Box	ECL #	Estimated Cost	Use %
Land					
Property <u>Plant 2 Excel Model EX63 Baler</u>	<u>No</u>	<u>12</u>	<u>M-4</u>	<u>62,662</u>	<u>100%</u>
Totals	No	12		62,662	100%

10. **EMISSION REDUCTION INCENTIVE GRANT**

(For more information about these grants, see instructions.)

Will an application for an Emission Reduction Incentive Grant be filed for this property or project?

Yes  No

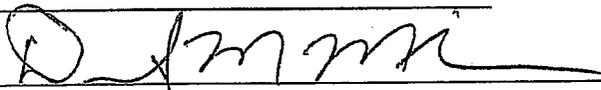
11. **APPLICATION DEFICIENCIES**

After an initial review of the application, the TCEQ may determine that the information provided with the application is not sufficient to make a use determination. The TCEQ may send a notice of deficiency, requesting additional information that must be provided within 30 days of the written notice.

12. **SIGNATURE**

By signing this application, you certify that this information is true to the best of your knowledge and belief.

Printed Name: David M. Milan Date: 7/16/2010

Signature: 

Title: Consultant

Company: Cantrell McCulloch, Inc.

Under Texas Penal Code 37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine up to \$2,000, or a prison term of two to 10 years and a fine of up to \$5,000.

13. **DELINQUENT FEES AND PENALTIES**

This form will not be processed until all delinquent fees and penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.

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Page 4 of 10

# 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.

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**Air Quality Division**

## Attachment A

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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**

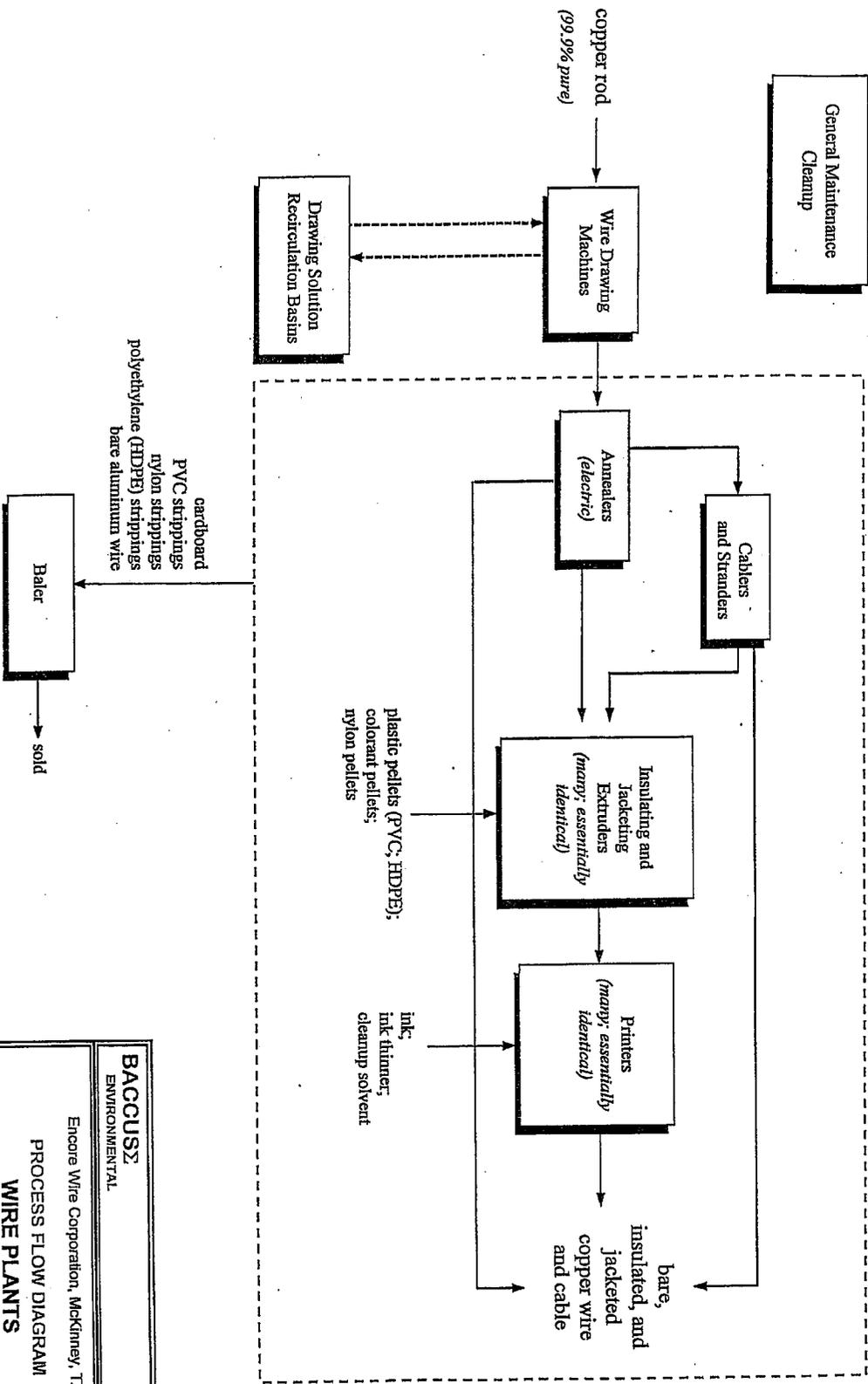
**5. Pollution Prevention Measures and Controls**

(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."

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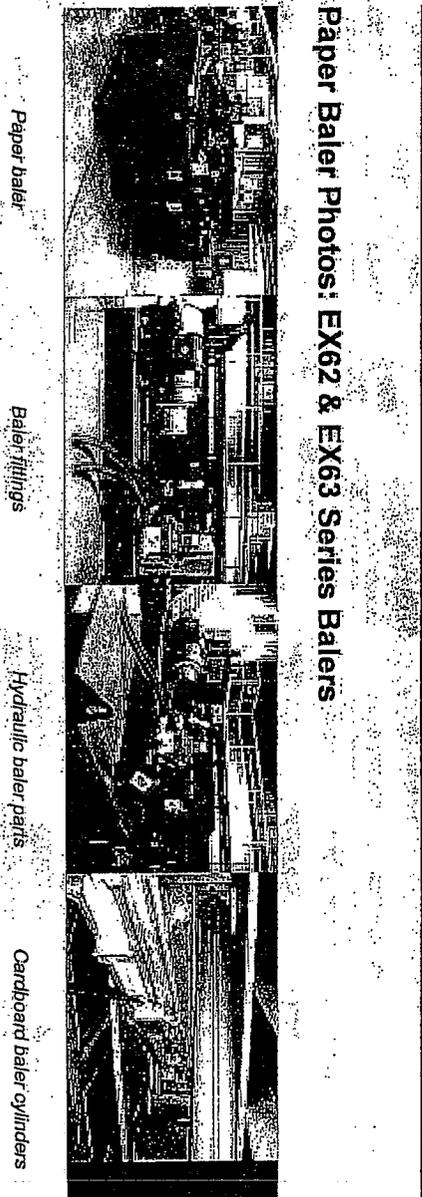
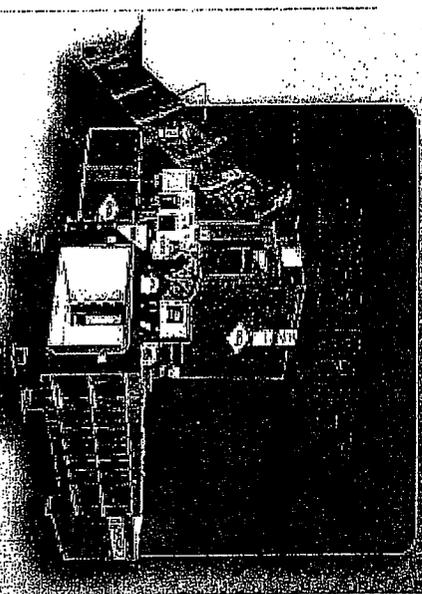
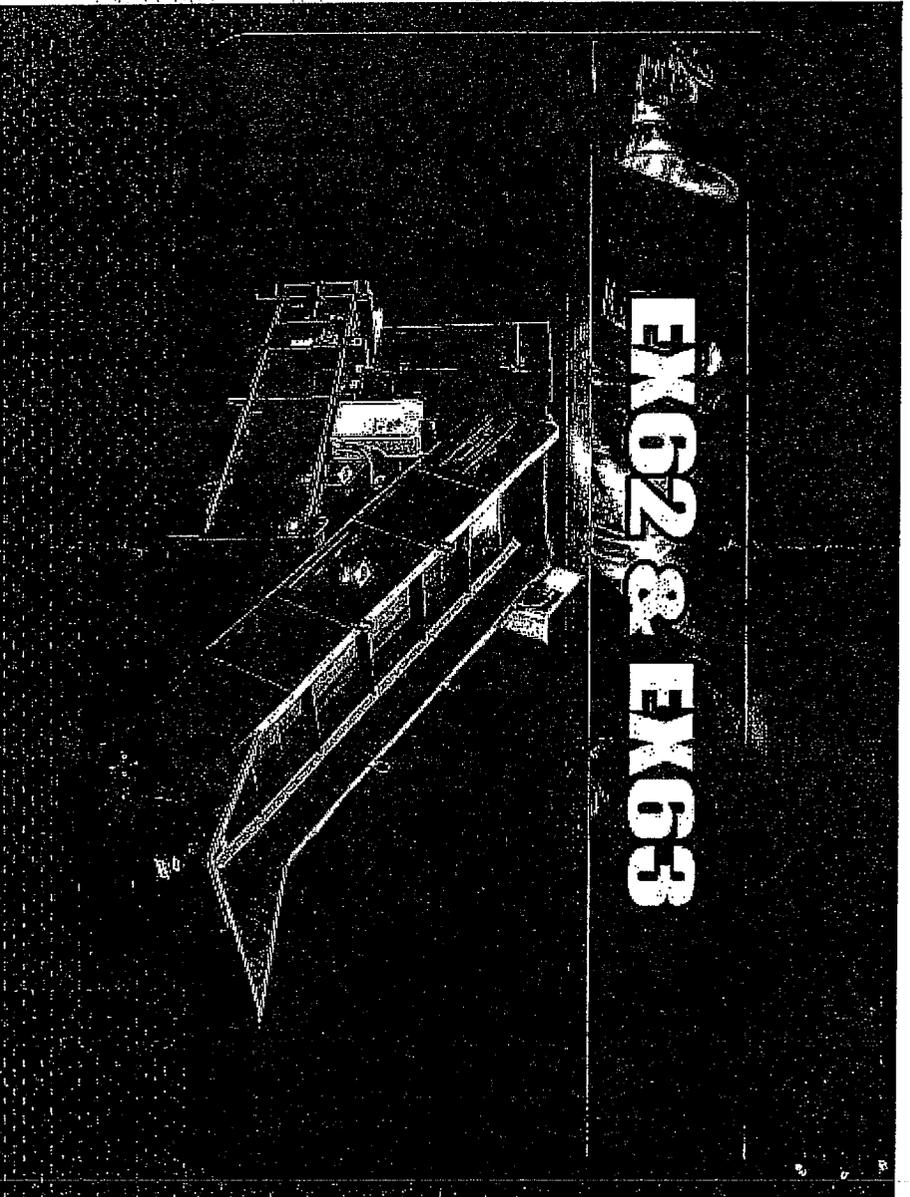
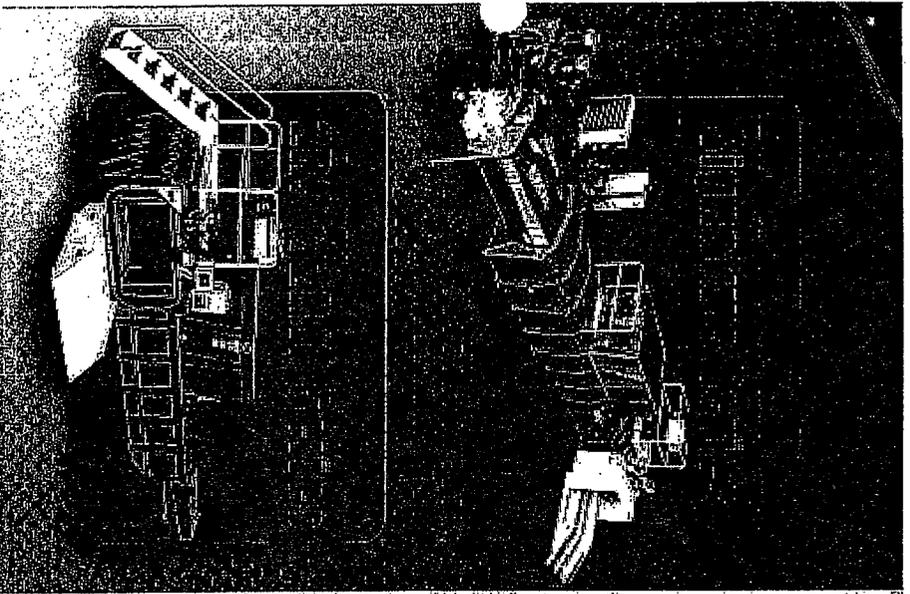
**Air Quality Division**



**BACCUSZ**  
ENVIRONMENTAL

Encore Wire Corporation, McKinney, TX  
PROCESS FLOW DIAGRAM  
**WIRE PLANTS**

6.13.10



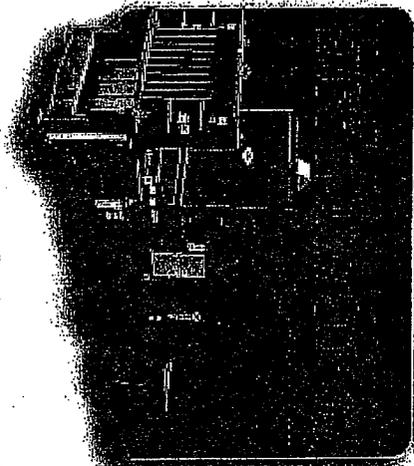
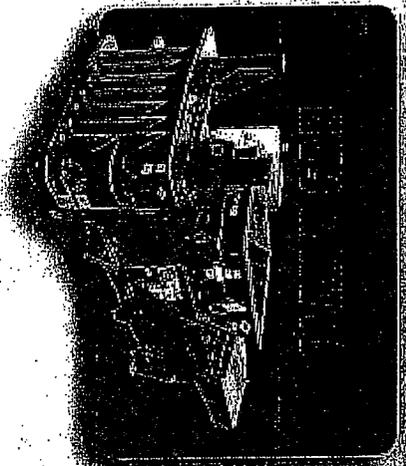
Paper Baler Photos: EX62 & EX63 Series Balers

Paper baler

Baler fittings

Hydraulic baler parts

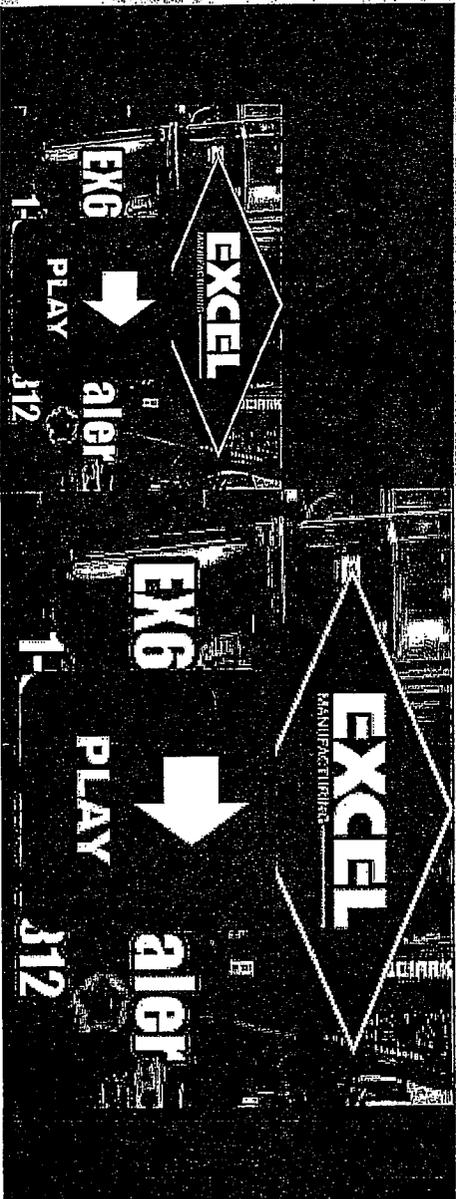
Cardboard baler cylinders



click baler photos above to enlarge

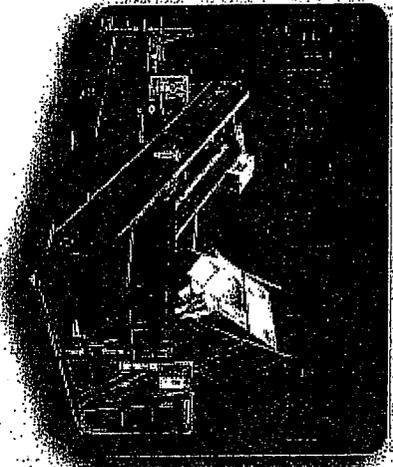
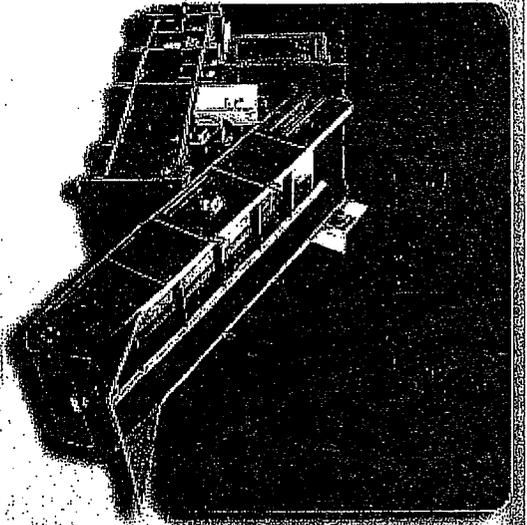
## EX62 & EX63 Series Balers – Paper Baler Machines

The Excel EX62 & EX63 balers are designed to perform as paper recycling balers, cardboard balers, newspaper balers, aluminum can balers, tin can balers, PET balers, and HDPE balers. These recycling machines operate extremely well as recycling balers for many different recyclable products. Our baling machines produce the best mill-sized bales in the baling industry without preconditioning. Excel uses only the highest quality baler components available for ultimate performance and paper baler reliability.



### Standard Features: EX62 & EX63 Series Balers

- Hydraulic Door Latch (EX63 baler only)
- Regenerative Circuit (EX63 baler only): Reduces cycle time by 17 seconds
- The EX62 baler is manufactured standard with either left-hand or right-hand door swing
- 20 HP TEFC Motor, Standard Voltage - 208, 230, 460 Volt, 60 Hertz, 3 Phase
- Horsepower limited Pressure Compensated Piston Pump
- Removable Shear Blade with Four Cutting edges



- SIX Fully Guided Wire Tie Slots
- Automatic Bale Sizing System
- Automatic Shear Jam Correction
- Short Stroke Feature to Reduce Cycle Time
- Excel's 1-2-3 Warranty (1 Year Labor, 2 Year Parts, 3 Year Structural & Cylinder) (U.S.A. only)
- Complete with MV32 Hydraulic Oil
- NEMA 12 rated Enclosures and Controls
- Remote Controls - According to Door Swing
- Safety Interlock Door with Decompression
- Clean-out Tool, Grease Gun, and Extra Touch-up Paint
- One Bundle of 12 x 13 Single Loop Wire Ties
- Sandblasted, Primed, and Painted Excel Blue for Long Lasting Durability
- Standard Hopper
- Lower Photo Eye
- UL, CUL Approved (CE Available)
- PLC Controlled Operation
- Available with an Excel above-ground or in-ground conveyor for a turn-key system

**The Excel EX62 & EX63 Series Balers bale the following materials:**

- Office Paper
- Newspaper
- OCC
- Magazines
- PET
- HDPE
- Aluminum Cans
- Tin Cans
- Plastic Film
- Carpet Padding
- Textiles
- Other materials

**ED's Exhibit #6 – Email from Ronald Hatlett to David M. Milan, dated July 20, 2010 and Email Response from David M. Milan, dated August 5, 2010**

**Ronald Hatlett - RE: Encore Wire 14259 - Additional information regarding Baler**

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**From:** "David Milan" <dmilan@cmi-tax.com>  
**To:** "Ronald Hatlett" <RHATLETT@tceq.state.tx.us>  
**Date:** 8/5/2010 12:39 PM  
**Subject:** RE: Encore Wire 14259 - Additional information regarding Baler

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Ron,

As we discussed briefly, Encore Wire is a small quantity generator and is required to file Toxic Release Inventory (TRI) reports annually. The baler at issue is used to recycle PVC stripping which contains lead that is an impurity in the fire retardant portion of the PVC, and antimony compounds which is the active component of the fire retardant in the PVC as well as zinc which is part of the non lead stabilizer in the PVC. These chemicals are reported each year by Encore in their TRI reports. The baled materials are then sent out for appropriate handling, recycling and disposal as opposed to just sending to a land fill. As you are aware, The Pollution Prevention Act of 1990 requires facilities to include in their TRI reports, source reduction and recycling activities that were implemented to reduce the release of a TRI chemical into the environment.

As a side note, even though Encore is a small quantity generator, by virtue of being required to file the TRI reports, they are automatically required by the State of Texas to implement a 5-year plan for source reduction and waste minimization that specifically relates to hazardous waste and TRI chemical releases. Encore must file a report with the state every 1<sup>st</sup> addressing their pollution prevention progress.

If you have any additional questions or need to discuss further, please give me a call.

Kind regards,

David Milan

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**PLEASE NOTE OUR NEW ADDRESS:**

David M. Milan, ASA  
Cantrell McCulloch, Inc.  
12750 Merit Drive, Ste. 400  
Dallas, TX 75251  
Phone 214-368-5566, ext 332  
Fax 214-594-9993  
Cell 214-957-1746  
dmilan@cmi-tax.com

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**From:** Ronald Hatlett [mailto:RHATLETT@tceq.state.tx.us]  
**Sent:** Tuesday, July 20, 2010 8:12 AM

**To:** dmilan@cmi-tax.com  
**Subject:** Encore Wire 14259

Mr. Milan,

I have reviewed your response related to the baler application. While some of the listed rules and laws encourage recycling, none require the installation or use of this baler. Please provide a citation to the subsection of an adopted environmental rule or regulation which requires the installation and use of the baler.

When we received the response to the original notice of deficiency we treated the application with the baler as application 14259. We have been holding the other three applications pending the payment of the appropriate application fees of \$450 (3 x \$150). We have not received confirmation of the fee payment. If the fees have been paid please provide us with proof. If the fees have not been paid please either pay them or let us know so that we can return the applications.

Thank you for your assistance in this matter.

Ron Hatlett

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