

**HD Recycling, LLC**  
**RN106327521**  
**Docket No. 2012-1359-MSW-E**

**Order Type:**

Agreed Order

**Media:**

MSW

**Small Business:**

Yes

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

105 Dennis Road, Weatherford, Parker County

**Type of Operation:**

waste processing facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: 2013-0208-WQ-E (AO published September 12, 2014);  
 2013-1654-MSW-E (AO published August 29, 2014);  
 2013-1653-MSW-E (SOAH prelim. September 4, 2014)

Past-Due Penalties: None

Past-Due Fees: \$400 (FA Acct. No. 20040455; stormwater)

Other: None

Interested Third-Parties: None

**Texas Register Publication Date:** August 29, 2014**Comments Received:** None**Penalty Information****Total Penalty Assessed:** \$12,302**Deferred for Financial Inability to Pay:** \$11,102**Total Paid to General Revenue:** \$1,200**Total Due to General Revenue:** \$0**Compliance History Classifications:**

Person/CN – Not yet rated

Site/RN – Not yet rated

**Major Source:** No**Statutory Limit Adjustment:** None**Applicable Penalty Policy:** September 2011**Investigation Information****Complaint Date(s):** March 8, 2012; February 17, 2012

Complaint Information: Complainant concerned about effects of asphalt and tar paper on surface water (both complaints).

**Date(s) of Investigation:** March 14, 2012**Date(s) of NOV(s):** N/A**Date(s) of NOE(s):** May 21, 2012

**HD Recycling, LLC**  
**RN106327521**  
**Docket No. 2012-1359-MSW-E**

**Violation Information**

1. Failed to prevent unauthorized disposal of municipal solid waste ("MSW") (approx. 1,577 cu/yd. (315 tons) of asphalt shingles) [30 TEX. ADMIN. CODE § 330.15(c)].
2. Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors [30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d)].
3. Failed to maintain the required waste minimization and recycling records [30 TEX. ADMIN. CODE § 328.5(f)(2)(B)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

1. On April 24, 2012, obtained sufficient financial assurance for the closure of the Facility.
2. As of June 10, 2014, Respondent is no longer operating the Facility and is in the process of shutting down the Facility.

**Technical Requirements:**

1. Immediately cease disposing of any additional MSW at the Site.
2. Within 120 days, remove all MSW from the Site and dispose of the MSW at an authorized facility.
3. Within 135 days, submit written certification to demonstrate compliance.

**Litigation Information**

<b>Date Petition(s) Filed:</b>	August 28, 2013
<b>Date Answer(s) Filed:</b>	September 17, 2013
<b>SOAH Referral Date:</b>	November 22, 2013
<b>Hearing Date(s):</b>	
Preliminary hearing:	January 16, 2014 (waived)
Evidentiary hearing:	May 29, 2014 (scheduled)
<b>Settlement Date:</b>	July 7, 2014

**Contact Information**

**TCEQ Attorneys:** Jennifer Cook, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Garrett Arthur, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Margarita Dennis, Enforcement Division, (817) 588-5892

**TCEQ Regional Contact:** Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5800

**Respondent:** Thomas J. Downs, Director, HD Recycling, LLC, 509 Turkey Run, Abilene, Texas 79602

**Respondent's Attorney:** Scott Breen, Law Offices of Scott Breen, 6338 North New Braunfels, No. 277, San Antonio, Texas 78209



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	29-May-2012		
	<b>PCW</b>	9-Oct-2012	<b>Screening</b>	11-Jun-2012
			<b>EPA Due</b>	

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	HD Recycling, LLC
<b>Reg. Ent. Ref. No.</b>	RN106327521
<b>Facility/Site Region</b>	4-Dallas/Fort Worth
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	44496	<b>No. of Violations</b>	3
<b>Docket No.</b>	2012-1359-MSW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Margarita Dennis
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$10,000
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<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
<b>Compliance History</b>	0.0% Enhancement <b>Subtotals 2, 3, &amp; 7</b>	\$0

<b>Notes</b>	No adjustment for compliance history.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$2,187
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$4,545	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$5,775		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$7,813
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	57.5%	<b>Adjustment</b>	\$4,489
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<b>Notes</b>	Enhancement to capture the avoided cost of compliance associated with violation no. 2.	
	<b>Final Penalty Amount</b>	\$12,302

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$12,302
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$12,302
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Screening Date 11-Jun-2012

Docket No. 2012-1359-MSW-E

PCW

Respondent HD Recycling, LLC

Policy Revision 3 (September 2011)

Case ID No. 44496

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106327521

Media [Statute] Municipal Solid Waste

Enf. Coordinator Margarita Dennis

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

#### >> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

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

N/A

Adjustment Percentage (Subtotal 7) 0%

#### >> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

#### >> Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 0%

<b>Screening Date</b>	11-Jun-2012	<b>Docket No.</b>	2012-1359-MSW-E	<b>PCW</b>
<b>Respondent</b>	HD Recycling, LLC			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	44496			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN106327521			
<b>Media [Statute]</b>	Municipal Solid Waste			
<b>Enf. Coordinator</b>	Margarita Dennis			

**Violation Number**

**Rule Cite(s)**

30 Tex. Admin. Code § 330.15(c)

**Violation Description**

Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 1,577 cubic yards (315 tons) of asphalt shingles were disposed of at the Facility.

**Base Penalty**

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

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Percent**

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Percent**

Matrix Notes

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

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

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

**Violation Base Penalty**

Two monthly events are recommended based on documentation of the violation during the March 14, 2012 investigation to the April 24, 2012 compliance date.

**Good Faith Efforts to Comply**

Reduction

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

Notes: The Respondent came into compliance on April 24, 2012 prior to the Notice of Enforcement issued on May 21, 2012.

**Violation Subtotal**

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

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

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

# Economic Benefit Worksheet

**Respondent** HD Recycling, LLC  
**Case ID No.** 44496  
**Reg. Ent. Reference No.** RN106327521  
**Media Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	20-Jan-2012	24-Apr-2012	0.26	\$7	n/a	\$7

**Notes for DELAYED costs**  
 Estimated cost to prepare and submit a Notice of Intent ("NOI") to operate a recycling facility. The date required is the date the Respondent began Facility operations and the final date is the date of compliance.

### Avoided Costs

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

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

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$500

**TOTAL** \$7

Screening Date 11-Jun-2012

Docket No. 2012-1359-MSW-E

PCW

Respondent HD Recycling, LLC

Policy Revision 3 (September 2011)

Case ID No. 44496

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106327521

Media [Statute] Municipal Solid Waste

Enf. Coordinator Margarita Dennis

Violation Number 2

Rule Cite(s)

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

Violation Description

Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors. Specifically, the Respondent did not establish financial assurance for closure of the Facility.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

41 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$312

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

Notes The Respondent came into compliance on April 24, 2012 prior to the Notice of Enforcement issued on May 21, 2012.

Violation Subtotal \$938

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4,489

Violation Final Penalty Total \$1,477

This violation Final Assessed Penalty (adjusted for limits) \$1,477

# Economic Benefit Worksheet

**Respondent** HD Recycling, LLC  
**Case ID No.** 44496  
**Reg. Ent. Reference No.** RN106327521  
**Media Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

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

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]	\$4,275	20-Jan-2012	24-Apr-2012	1.00	\$214	\$4,275	\$4,489
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to provide financial assurance for the closure of the Facility (\$45 per day). The date required is the date the Respondent began Facility operations and the final date is the date of compliance.

Approx. Cost of Compliance

\$4,275

**TOTAL**

\$4,489

Screening Date 11-Jun-2012

Docket No. 2012-1359-MSW-E

PCW

Respondent HD Recycling, LLC

Policy Revision 3 (September 2011)

Case ID No. 44496

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106327521

Media [Statute] Municipal Solid Waste

Enf. Coordinator Margarita Dennis

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 328.5(f)(2)(B)

Violation Description

Failed to maintain the required waste minimization and recycling records. Specifically, records were not available to demonstrate training of Facility staff members in the proper inspection of incoming loads.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

89 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$50

Violation Final Penalty Total \$1,968

This violation Final Assessed Penalty (adjusted for limits) \$1,968

# Economic Benefit Worksheet

**Respondent** HD Recycling, LLC  
**Case ID No.** 44496  
**Reg. Ent. Reference No.** RN106327521  
**Media Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$1,000	14-Mar-2012	11-Mar-2013	0.99	\$50	n/a	\$50
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to maintain waste minimization and recycling records. The date required is the investigation date and the final date is the estimated date of compliance.

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

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

**Notes for AVOIDED costs**

<b>Approx. Cost of Compliance</b>	\$1,000	<b>TOTAL</b>	\$50
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# Compliance History Report

Customer/Respondent/Owner-Operator:	CN603966573	HD Recycling, LLC	Classification:	Rating:
Regulated Entity:	RN106327521	HD Recycling	Classification:	Site Rating:
ID Number(s):	MUNICIPAL SOLID WASTE PROCESSING	AIR NEW SOURCE PERMITS	REGISTRATION	100342
			REGISTRATION	100634
Location:	105 DENNIS RD, WEATHERFORD, TX, 76087			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	June 11, 2012			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 11, 2007 to June 11, 2012			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Margarita Dennis		Phone:	512-239-2578

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? NO
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If **YES**, who is the current owner/operator? N/A
4. If **YES**, who was/were the prior owner(s)/operator(s)? N/A
5. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: N/A Repeat Violator: N/A

## Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
HD RECYCLING, LLC;  
RN106327521**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2012-1359-MSW-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding HD Recycling, LLC ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Scott Breen of the Law Office of Scott Breen, together stipulate that:

1. Respondent owns and operated a waste processing facility located at 105 Dennis Road in Weatherford, Parker County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.054 and 7.070. The TCEQ has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Executive Director and Respondent agree that TCEQ has jurisdiction to enter this Agreed Order, and that Respondent is subject to TCEQ's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of twelve thousand three hundred two dollars (\$12,302.00) is assessed by the Commission in settlement of the violations alleged in Section II. The Financial Assurance Section of TCEQ's Financial Administration Division reviewed the financial documentation submitted by Respondent and determined that Respondent is unable to pay all or part of the administrative penalty. Therefore, eleven thousand one hundred two dollars (\$11,102.00) of the administrative penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Agreed Order, and shall be waived only upon full compliance with all the terms and conditions contained in this Agreed Order. If Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, including any payment schedule, the Executive Director may require Respondent to pay all or part of the deferred administrative penalty.

Respondent paid one thousand two hundred dollars (\$1,200.00) of the one thousand two hundred dollar (\$1,200.00) und deferred administrative penalty.

6. 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.

7. The Executive Director and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions contained in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. 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.
11. The Executive Director recognizes that:
  - a. On April 24, 2012, Respondent obtained sufficient financial assurance for the closure of the Facility; and
  - b. As of June 10, 2014, Respondent is no longer operating and is in the process of shutting down the Facility.

## **II. ALLEGATIONS**

1. During an investigation conducted on March 14, 2012, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent:
  - a. Failed to prevent unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c). Specifically, approximately 1,577 cubic yards (315 tons) of asphalt shingles were disposed of at the Facility;
  - b. Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors, in violation of 30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d); and
  - c. Failed to maintain the required waste minimization and recycling records, in violation of 30 TEX. ADMIN. CODE § 328.5(f)(2)(B). Specifically, records were not available to demonstrate training of Facility staff members in the proper inspection of incoming loads.
2. Respondent received notice of the alleged violations on or about May 26, 2012.

## **III. DENIALS**

Respondent generally denies each Allegation in Section II.

## **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here.

2. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, Respondent shall cease disposing of any additional MSW at the Site.
  - b. Within 120 days after the effective date of this Agreed Order, Respondent shall remove all MSW from the Site and dispose of the MSW at an authorized facility.
  - c. Within 135 days after the effective date of this Agreed Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 2.a. and 2.b. The certification required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

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

Respondent shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

And:

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

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If Respondent 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against Respondent 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 TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails a copy of the fully executed Agreed Order to Respondent, whichever is earlier.

**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
For the Commission

*[Signature]*  
For the Executive Director

*September 22, 2014*  
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 HD Recycling, LLC, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

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

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

*Scott E. Green, Member Yankee Blue*      *7-7-2014*  
Signature      *LLC, member*      Date  
*SCOTT E. BREEN*      *HD Recycling, LLC*      *MEMBER YANKEE BLUE, LLC,*  
Name (Printed or typed)      Title      *MEMBER HD RECYCLING, LLC*  
Authorized representative of      *ATTORNEY FOR HD RECYCLING, LLC*  
HD Recycling, LLC