

HD Recycling, LLC
RN106327521
Docket No. 2013-1654-MSW-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective (Violation 4).

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: 2012-1359-MSW-E (AO published August 29, 2014);
 2013-0208-WQ-E (AO published September 12, 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:** \$105,207**Deferred for Financial Inability to Pay:** \$104,007**Total Paid to General Revenue:** \$1,200**Total Due to General Revenue:** \$0**SEP Conditional Offset:** N/A**Compliance History Classifications:**

Person/CN – Unclassified

Site/RN – Unclassified

Major Source:

No

Statutory Limit Adjustment:

None

Applicable Penalty Policy:

September 2011

Investigation Information**Complaint Date(s):**

May 25, 2013

Complaint Information:

Alleged used roofing tar was dumped at the site.

Date(s) of Investigation:

June 6, 2013

Date(s) of NOV(s):

N/A

Date(s) of NOE(s):

August 23, 2013

HD Recycling, LLC
RN106327521
Docket No. 2013-1654-MSW-E

Violation Information

1. Failed to report any updates or changes to information contained in the Site report within 90 days of the effective date of the change [30 TEX. ADMIN. CODE § 328.5(b)(4)].
2. Failed to maintain all records necessary to show compliance with the requirements of limitations on storage of recyclable materials and proof of financial assurance sufficient to cover all closure costs [30 TEX. ADMIN. CODE § 328.5(f)(1) and (f)(3)].
3. Failed to meet the recycling rates relating to limitations on storage of recyclable materials [30 TEX. ADMIN. CODE § 328.4(b)(3)].
4. Failed to prevent the unauthorized disposal of municipal solid waste (“MSW”) (approx. 18,003 cu/yd. (3,600 tons) of shingles, 55 wood pallets, 40 cu/yd. of plastic and wood construction debris, and a plastic tote) [30 TEX. ADMIN. CODE § 330.15(c)].
5. Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors [30 TEX. ADMIN. CODE §§ 328.5(d) and 37.921].
6. Failed to complete closure requirements within 180 days following the most recent acceptance of processed or unprocessed materials [30 TEX. ADMIN. CODE § 328.5(e)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

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

Date Petition(s) Filed: January 14, 2014
Date Answer(s) Filed: February 25, 2014
SOAH Referral Date: March 31, 2014
Hearing Date(s):
Preliminary Hearing: May 8, 2014 (waived)
Evidentiary Hearing: September 12, 2014 (scheduled)
Settlement Date: 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: Danielle Porras, Enforcement Division, (713) 767-3682

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

Respondent Contact: 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

DATES	Assigned	26-Aug-2013		
	PCW	17-Sep-2014	Screening	4-Sep-2013
			EPA Due	

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

CASE INFORMATION			
Enf./Case ID No.	47556	No. of Violations	6
Docket No.	2013-1654-MSW-E	Order Type	Findings
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$82,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
Compliance History	0.0% Enhancement Subtotals 2, 3, & 7	\$0

Notes: No adjustment for Compliance History.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	50.0% Enhancement*	Subtotal 6	\$10,320
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Total EB Amounts	\$22,707
Approx. Cost of Compliance	\$225,945

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$92,820
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OTHER FACTORS AS JUSTICE MAY REQUIRE	13.3%	Adjustment	\$12,387
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided costs of compliance associated with violation nos. 1, 2 and 5.

Final Penalty Amount \$105,207

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$105,207
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$105,207
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Screening Date 4-Sep-2013

Docket No. 2013-1654-MSW-E

PCW

Respondent HD Recycling, LLC

Policy Revision 3 (September 2011)

Case ID No. 47556

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106327521

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No adjustment for Compliance History.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date 4-Sep-2013 **Docket No.** 2013-1654-MSW-E **PCW**
Respondent HD Recycling, LLC *Policy Revision 3 (September 2011)*
Case ID No. 47556 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN106327521
Media [Statute] Municipal Solid Waste
Enf. Coordinator Danielle Porras

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 328.5(b)(4)

Violation Description

Failed to report any updates or changes to information contained in the Site report within 90 days of the effective date of the change. Specifically, the Respondent accepted approximately 16,000 cubic yards of additional combustible materials without updating the Notice of Intent.

Base Penalty

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

OR

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

Percent

>> **Programmatic Matrix**

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

Percent

Matrix Notes

100% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

Reduction

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

Notes

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

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. 47556
Reg. Ent. Reference No. RN106327521
Media Violation No. 1

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]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	8-Mar-2013	6-Jun-2013	1.16	\$6	\$100	\$106
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to update the NOI. The Date Required is 90 days prior to the investigation date and the Final Date is the investigation date.

Approx. Cost of Compliance \$100

TOTAL \$106

Screening Date 4-Sep-2013

Docket No. 2013-1654-MSW-E

PCW

Respondent HD Recycling, LLC

Policy Revision 3 (September 2011)

Case ID No. 47556

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106327521

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 328.5(f)(1) and (f)(3)

Violation Description

Failed to maintain all records necessary to show compliance with the requirements of Limitations on Storage of Recyclable Materials and proof of financial assurance sufficient to cover all closure costs.

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

1 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 \$548

Violation Final Penalty Total \$5,706

This violation Final Assessed Penalty (adjusted for limits) \$5,706

Economic Benefit Worksheet

Respondent HD Recycling, LLC
Case ID No. 47556
Reg. Ent. Reference No. RN106327521
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$500	6-Jun-2012	6-Jun-2013	1.92	\$48	\$500	\$548
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to maintain all records necessary to show compliance with the requirements of Limitations on Storage of Recyclable Materials and proof of financial assurance sufficient to cover all closure costs. The Date required is one year prior to the investigation date and the Final Date is the investigation date.

Approx. Cost of Compliance \$500

TOTAL \$548

Screening Date 4-Sep-2013

Docket No. 2013-1654-MSW-E

PCW

Respondent HD Recycling, LLC

Policy Revision 3 (September 2011)

Case ID No. 47556

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106327521

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 328.4(b)(3)

Violation Description

Failed to meet the recycling rates relating to limitations on storage of recyclable materials. Specifically, the Respondent had accumulated approximately 18,003 cubic yards of combustible materials that did not meet the 50% recycling rate.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 3

90 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$11,250

Three monthly events are recommended based on documentation of the violation during the June 6, 2013 investigation to the September 4, 2013 screening date.

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 \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$17,041

This violation Final Assessed Penalty (adjusted for limits) \$17,041

Economic Benefit Worksheet

Respondent HD Recycling, LLC
Case ID No. 47556
Reg. Ent. Reference No. RN106327521
Media Violation No. 3

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

Economic benefit included in violation no. 4.

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 \$0

TOTAL \$0

Screening Date 4-Sep-2013

Docket No. 2013-1654-MSW-E

PCW

Respondent HD Recycling, LLC

Policy Revision 3 (September 2011)

Case ID No. 47556

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106327521

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 4

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 18,003 cubic yards (3,600 tons) of MSW including asphalt shingles, 55 wood pallets, 40 cubic yards of plastic and wood construction debris, and a plastic tote were disposed of at the Site.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 3

90 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$22,500

Three monthly events are recommended from the June 6, 2013 investigation to the September 4, 2013 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Reduction	
	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 \$22,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$10,320

Violation Final Penalty Total \$29,792

This violation Final Assessed Penalty (adjusted for limits) \$29,792

Economic Benefit Worksheet

Respondent HD Recycling, LLC
Case ID No. 47556
Reg. Ent. Reference No. RN106327521
Media Violation No. 4

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	\$214,639	6-Jun-2013	23-May-2014	0.96	\$10,320	n/a	\$10,320
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the MSW and dispose of it at a facility authorized to accept the waste. 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

Approx. Cost of Compliance

\$214,639

TOTAL

\$10,320

Screening Date 4-Sep-2013

Docket No. 2013-1654-MSW-E

PCW

Respondent HD Recycling, LLC

Policy Revision 3 (September 2011)

Case ID No. 47556

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106327521

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code §§ 328.5(d) and 37.901

Violation Description

Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors. Specifically, the Respondent does not have financial assurance that is sufficient to cover all closure costs.

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

1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$1,250

One annual event is recommended for the 12-month period preceding the June 6, 2013 investigation.

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 \$11,733

Violation Final Penalty Total \$5,706

This violation Final Assessed Penalty (adjusted for limits) \$5,706

Economic Benefit Worksheet

Respondent HD Recycling, LLC
Case ID No. 47556
Reg. Ent. Reference No. RN106327521
Media Municipal Solid Waste
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$10,706	6-Jun-2012	6-Jun-2013	1.92	\$1,027	\$10,706	\$11,733
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for the closure of the Facility. The Date Required is one year prior to the investigation date and the Final Date is the investigation date.

Approx. Cost of Compliance \$10,706

TOTAL \$11,733

Screening Date 4-Sep-2013

Docket No. 2013-1654-MSW-E

PCW

Respondent HD Recycling, LLC

Policy Revision 3 (September 2011)

Case ID No. 47556

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106327521

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 6

Rule Cite(s)

30 Tex. Admin. Code § 328.5(e)

Violation Description

Failed to complete closure requirements within 180 days following the most recent acceptance of processed or unprocessed materials. Specifically, the Respondent shut down and ceased operations at the Site on March 2012, with processed and unprocessed materials remaining on Site.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 12

342 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$45,000

Twelve monthly events are recommended from the estimated completion date of closure September 27, 2012 to the September 4, 2013 screening date.

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 \$45,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$55,295

This violation Final Assessed Penalty (adjusted for limits) \$55,295

Economic Benefit Worksheet

Respondent HD Recycling, LLC
Case ID No. 47556
Reg. Ent. Reference No. RN106327521
Media Municipal Solid Waste
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

Economic benefit included in violation no. 4.

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 \$0

TOTAL \$0

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN603966573, RN106327521, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN603966573, HD Recycling, LLC **Classification:** UNCLASSIFIED **Rating:** -----
Regulated Entity: RN106327521, HD Recycling **Classification:** UNCLASSIFIED **Rating:** -----
Complexity Points: 6 **Repeat Violator:** NO
CH Group: 14 - Other
Location: 105 DENNIS RD WEATHERFORD, TX 76087-9059, PARKER COUNTY
TCEQ Region: REGION 04 - DFW METROPLEX
ID Number(s): **MUNICIPAL SOLID WASTE PROCESSING REGISTRATION** 100342
AIR NEW SOURCE PERMITS REGISTRATION 100634

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 9/1/2012

Date Compliance History Report Prepared: August 30, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 30, 2008 to August 30, 2013

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

Name: Danielle Porras

Phone: (713) 767-3682

Site and Owner/Operator History:

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

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

N/A

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

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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. 2013-1654-MSW-E

At its _____ agenda meeting, 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 TEXAS 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 Offices of Scott Breen, presented this Agreed Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, the right to an evidentiary hearing, notice of an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

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

FINDINGS OF FACT

1. Respondent owns and operated a waste processing facility located at 105 Dennis Road in Weatherford, Parker County, Texas (the "Site"). The Site involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on June 6, 2013, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent:
 - a. Failed to report any updates or changes to information contained in the Site report within 90 days of the effective date of the change. Specifically, Respondent accepted approximately 16,000 cubic yards of additional combustible materials without updating the Notice of Intent;
 - b. Failed to maintain all records necessary to show compliance with the requirements of limitations on storage of recyclable materials and proof of financial assurance sufficient to cover all closure costs;
 - c. Failed to meet the recycling rates relating to limitations on storage of recyclable materials. Specifically, Respondent had accumulated approximately

18,003 cubic yards of combustible materials that did not meet the 50% recycling rate;

- d. Failed to prevent the unauthorized disposal of MSW. Specifically, approximately 18,003 cubic yards (3,600 tons) of MSW including asphalt shingles, 55 wood pallets, 40 cubic yards of plastic and wood construction debris, and a plastic tote were disposed of at the Site;
 - e. Failed to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors. Specifically, Respondent does not have financial assurance that is sufficient to cover all closure costs; and
 - f. Failed to complete closure requirements within 180 days following the most recent acceptance of processed or unprocessed materials. Specifically, Respondent shut down and ceased operations at the Site in March 2012, with processed and unprocessed materials remaining on the Site.
3. Respondent received notice of the violations on or about August 28, 2013.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to report any updates or changes to information contained in the Site report within 90 days of the effective date of the change, in violation of 30 TEX. ADMIN. CODE § 328.5(b)(4).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to maintain all records necessary to show compliance with the requirements of limitations on storage of recyclable materials and proof of financial assurance sufficient to cover all closure costs, in violation of 30 TEX. ADMIN. CODE § 328.5(f)(1) and (f)(3).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to meet the recycling rates relating to limitations on storage of recyclable materials, in violation of 30 TEX. ADMIN. CODE § 328.4(b)(3).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
6. As evidenced by Finding of Fact No. 2.e., Respondent 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 §§ 328.5(d) and 37.921.
7. As evidenced by Finding of Fact No. 2.f., Respondent failed to complete closure requirements within 180 days following the most recent acceptance of processed or unprocessed materials, in violation of 30 TEX. ADMIN. CODE § 328.5(e).
8. Pursuant to TEX. WATER CODE § 7.051, TCEQ has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
9. An administrative penalty in the amount of one hundred five thousand two hundred seven dollars (\$105,207.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Financial

Assurance Section of the 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, one hundred four thousand seven dollars (\$104,007.00) 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 dollars (\$1,200.00) undeferred administrative penalty.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 9, above, for violations of state statutes and rules of the TCEQ. 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 matters set forth by this Agreed Order in this action. 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 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 TX 76118-6951

3. All relief not expressly granted in this Agreed Order is denied.
4. The provisions of this Agreed Order shall apply to and be binding upon Respondent.
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 TCEQ under such a statute.
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 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. 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.

11. 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 notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

M. Swearingin
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 Agreed 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, LLC,
Signature *Member HD Recycling, LLC*
SCOTT E. BREEN
Name (Printed or typed)
Authorized representative of
HD Recycling, LLC

7-7-2014
Date
MEMBER YANKEE BLUE, LLC, MEMBER
Title *HD RECYCLING, LLC*
ATTORNEY FOR HD RECYCLING, LLC