

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

In re: §  
ENCYCLE/TEXAS, INC. §  
Debtor(s) § Case No. 05-21304

**TRUSTEE’S EXPEDITED MOTION AND APPLICATION TO APPROVE MASTER SERVICE AGREEMENT; TO EMPLOY ENERGY RENEWAL PARTNERS TO PERFORM CERTAIN PROFESSIONAL WORK ON ENCYCLE TRACT UNDER A FIXED FEE AGREEMENT; FOR APPROVAL OF PERIODIC PAYMENTS; AND TO APPROVE PROCEDURE AND PAYMENT OF AIR QUALITY MONITORING DURING DEMOLITION**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 20 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING. REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

**THERE WILL BE A HEARING ON THIS MOTION ON \_\_\_\_\_ AT \_\_\_\_\_ O’CLOCK IN COURTROOM \_\_\_\_\_.**

This is the Motion and Application of MIKE BOUDLOCHE, CHAPTER 7 TRUSTEE (“Trustee”), as follows:

1. Movant and Applicant is the duly appointed and qualified Trustee herein.
2. The Encycle Tract is comprised of 63.94 acres, plus or minus, commonly known as 5500 Up River Road, Corpus Christi, TX 78407 (“Encycle Tract”). To perform remediation and cleanup services of the Encycle Tract the Trustee requests and moves this Court to approve the Master Services Agreement (“Services Agreement”) with Energy Renewal Partners, LLC (“Contractor”) and to employ them to perform professional work to accomplish specified asbestos abatement, hazardous waste removal, decontamination, and demolition of buildings and structures

at the Encycle Tract (the "Services"). Soil remediation and removal on the Encycle Tract and the adjoining Meany land is not the subject of this Services Agreement, but the subject of another contract for which bids will be secured and approval thereof will be sought from this Court after demolition of the buildings and structures under this Services Agreement. Attached hereto and incorporated herein as Exhibit 1 is the proposed Master Service Agreement, together with all exhibits thereto, which expressly sets forth on Exhibit A thereto, the Services to be performed by Contractor on the Encycle Tract and on Exhibit B thereto, the Milestone Payments to Contractor after completion of certain specified items of those Services.

3. After receiving numerous bids to perform the Services on the Encycle Tract from several qualified professional service providers, the Trustee has determined that the Contractor has offered the lowest fixed price of \$3,642,286.00 to complete the Services. The Trustee feels that Contractor is well qualified to render the Services and §327 of the Bankruptcy Code permits the Trustee, with this Court's approval, to employ professional persons to assist the Trustee, if it is in the best interest of the estate and such professional person do not hold an interest adverse to the estate and are disinterested. Because of their experience and expertise, Trustee feels that such Contractor is well qualified to render the foregoing described Services.

5. Based upon the Declarations attached hereto, Trustee believes that Contractor does not hold or represent any interest adverse to the Trustee or the debtor's estate and that Contractor are disinterested persons within the meaning of 11 U.S.C. § 101(14). The Trustee knows of no connections of these firms with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee.

6. Trustee therefore requests the employment of Contractor to perform the Services pursuant to the Services Agreement for the fixed price set forth therein of \$3,642,286.00. The Trustee further requests approval of such Services Agreement and for authorization, without further order or approval of this Court for the Trustee to make the milestone payments to the Contractor, in the amounts and at the times provided in Exhibit B to such Services Agreement, upon the Trustee's sole determination that such milestone has been satisfactorily completed. The Trustee shall make a report each quarter to the Court of the status of the work, the milestones achieved and the amount of milestone payments that have been made to Contractor pursuant to this approved Services Agreement.

7. Attached hereto as Exhibit 2 is the proposed Air Monitoring Program to be put in place during Contractor's demolition of the building and smokestack at the Encycle Tract. The Trustee requests this Court approve and authorize implementation of this Air Monitoring Program and the use of Arcadis (Kenneth Brandner), the Trustee's previously approved environmental professional to oversee under his existing approved employment this Air Monitoring Program and compensation therefore to be in accordance with this existing employment.

WHEREFORE, the Trustee prays that the Services Agreement be approve, that he be

authorized to employ Contractor to render the Services with compensation to be paid as set forth in Exhibit B to such Services Agreement as administrative expenses, upon completion of each milestone without further order of this Court; for approval of the Air Monitoring Program and authorization of Arcadis (Kenneth Brandner) to oversee same pursuant to their existing approved employment.

Date: 11/8/10

Respectfully submitted,

Mike Boudloche, Trustee  
Law Office of Michael B. Schmidt

/s/ Michael B. Schmidt  
Michael B. Schmidt,  
555 N. Carancahua, Ste. 1550  
Corpus Christi, Texas 78478  
TBN 17775200 FBN 10260  
361/884-9949 FAX: 361/884-6000  
Attorney for the Trustee

CERTIFICATE OF SERVICE

I certify that on November 8<sup>th</sup>, 2010, I mailed a copy of the foregoing Motion, electronically and/or by first class mail, postage prepaid, to all interested parties on the attached list.

/s/ Michael B. Schmidt  
Michael B. Schmidt

**Bruce W Akerly**  
Cantey Hanger LLP  
1999 Bryan Street  
Suite 3330  
Dallas, TX 75201

representing **Ryan & Company, Inc.**  
(Creditor)

**Jane E Atwood**  
Assistant Atty Gen  
Natural Resources Div  
PO Box 12548  
Austin, TX 78711-2548

representing **Texas Natural Resource Trustees**  
(Creditor)

