

Cause No. D-1-GN-18-003931

STATE OF TEXAS, Plaintiff,	§ § § § § § § § §	IN THE DISTRICT COURT  OF TRAVIS COUNTY, TEXAS  201ST _____ JUDICIAL DISTRICT
-------------------------------	---	--

v.

EDWARD J. RIFENBURY  
AND WILLIAM P. EASLEY  
DBA WE RECYCLE TEXAS,  
Defendants.

**PLAINTIFF’S ORIGINAL PETITION AND  
APPLICATION FOR INJUNCTIVE RELIEF**

The State of Texas (“State”), on behalf of the people of the State of Texas and the Texas Commission on Environmental Quality (“TCEQ”), files this Original Petition and Application for Injunctive Relief.

**1. Discovery and Relief Requested**

1.1 Pursuant to the Rules of Civil Procedure, discovery will follow a level two discovery control plan. Tex. R. Civ. P. 190.3.

1.2 This case is not subject to the restrictions of expedited proceedings under Rule 169 because (1) the State seeks non-monetary injunctive relief and (2) the State’s claims for civil penalties could exceed \$100,000 and the maximum potential civil penalty exceeds \$1,000,000.

**2. Parties**

2.1 Plaintiff, the State, brings suit pursuant to a referral for enforcement from the TCEQ. *See* Tex. Water Code § 7.105.

2.2 Defendant Edward J. Rifenburg is an individual who may be served with process at 2825 Kimberly Drive, Grapevine, Texas 76051; or wherever he may be found.

2.3 Defendant William P. Easley d/b/a We Recycle Texas is an individual who may be served with process at 2022 Indian Hills Drive, Spring Branch, Texas 78070; or wherever he may be found.

### **3. Jurisdiction and Venue**

3.1 This Court has jurisdiction pursuant to Tex. Water Code § 7.105(a).

3.2 Venue for this suit is proper in Travis County pursuant to Tex. Water Code § 7.105(c).

### **4. Nature of Suit and Authority**

4.1 This is a suit seeking compliance with Chapter 26 of the Texas Water Code and TCEQ rules adopted pursuant to the Texas Solid Waste Disposal Act (“TSWDA”), codified in Chapter 361 of the Texas Health and Safety Code. The State seeks injunctive relief, civil penalties, attorney’s fees, and court costs.

4.2 The TSWDA confers jurisdiction on TCEQ to adopt rules regulating the storage, processing, and disposal of solid waste, including industrial and municipal hazardous wastes. Tex. Health & Safety Code §§ 361.011, 361.017, and 361.024.

4.3 Pursuant to its authority under the TSWDA, TCEQ adopted Title 30, Chapters 324, 330 and 335 of the Texas Administrative Code to prohibit unauthorized storage, processing, and disposal of solid or hazardous waste and to regulate the storage and management of used oil.

4.4 Solid Waste is garbage, rubbish, refuse, sludge and other discarded material from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. 30 Tex. Admin. Code § 330.3(145).

4.5 Municipal Solid Waste (“MSW”) is “[s]olid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.” 30 Tex. Admin. Code § 330.3(88).

4.6 Hazardous Waste is “[a] solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 et seq.” 30 Tex. Admin. Code § 335.1(73).

4.7 Industrial Solid Waste (“ISW”) is solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include Hazardous Waste. 30 Tex. Admin. Code § 335.1(83).

4.8 Municipal Hazardous Waste (“MHW”) is municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency. 30 Tex. Admin. Code § 335.1(106).

4.9 Under 30 Tex. Admin. Code § 330.7(a), no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste and/or MSW unless such activity is authorized by permit or other authorization from TCEQ. In the event of such

unauthorized activity, TCEQ may seek recourse against not only the person that stored, processed, or disposed of the waste but also against the owner or operator, or any other person, who caused suffered, allowed, or permitted the waste to be stored, processed, or disposed. *Id.*

4.10 Under 30 Tex. Admin. Code § 330.15(a), a person may not cause, suffer, allow, or permit the collection, storage, or disposal of MSW in a manner that causes: (1) the discharge or imminent threat of discharge of MSW into or adjacent to waters in the state without obtaining specific authorization from the TCEQ for the discharge; (2) the creation of a nuisance; or (3) the endangerment of human health and the environment.

4.11 Under 30 Tex. Admin. Code § 335.2(a), a person may not cause, suffer, allow, or permit any activity of storage, processing, or disposal of any ISW or MHW unless such activity is authorized by a permit, amended permit, or other authorization from the TCEQ, the Department of State Health Services (DSHS), or other valid authorization from a Texas state agency.

4.12 “In addition to the requirements of §335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause: (1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the [TCEQ]; (2) the creation and maintenance of a nuisance; or (3) the endangerment of the public health and welfare.” 30 Tex. Admin. Code § 335.4.

4.13 Under 30 Tex. Admin. Code § 335.62, a person who generates a Solid Waste must determine if that waste is hazardous under 30 Tex. Admin. Code §335.504 (relating to Hazardous

Waste Determination) and must classify any nonhazardous waste under 30 Tex. Admin. Code §§ 335.501, *et. seq.* If the waste is determined to be hazardous, the generator must refer to this chapter and to 40 Code of Federal Regulations Parts 261, 264, 265, 266, 267, 268, and 273 for any possible applicable exclusions or restrictions pertaining to management of the specific waste.

4.14 Under 30 Tex. Admin. Code § 324.1, a person managing used oil must comply with the requirements of that chapter and the requirements in 40 Code of Federal Regulations (C.F.R.) Part 279, Standards for the Management of Used Oil, as amended through July 14, 2006, at 71 Fed.Reg. 40280, which the TCEQ adopted by reference. Under 40 C.F.R. 279.22(b)(1)-(2), “[c]ontainers and aboveground tanks used to store used oil at generator facilities must be: 1) In good condition (no severe rusting, apparent structural defects or deterioration); and 2) Not leaking (no visible leaks).” In addition, under 40 C.F.R. 279.22(c)(1), containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil.”

4.15 Under Tex. Water Code § 26.121(a) no person may (1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state; (2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state; or (3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state.

4.16 The Attorney General may institute a suit in the name of the State of Texas to enforce state statutes and TCEQ rules or orders through injunctive relief and civil penalties as set forth in Tex. Water Code §§ 7.032 and 7.105.

4.17 It is a violation of the Texas Water Code for a person to cause, suffer, allow, or permit a violation of a TCEQ rule or order. Tex. Water Code § 7.101.

4.18 A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit under TCEQ jurisdiction shall be assessed a civil penalty of not less than \$50 nor greater than \$25,000 for each day of each violation. Tex. Water Code § 7.102. Each day of continuing violation is a separate violation. *Id.*

## **5. Background**

5.1 Edward J. Rifenburg (“Rifenburg”) owns, and William P. Easley (“Easley”) operates, an unauthorized solid waste disposal site located at 13600 US Highway 281 North in Spring Branch, Comal County, Texas (the “Site”). The Site is located near two creeks that are tributaries of the Guadalupe River.

5.2 In 2014—when Easley began operating “We Recycle Texas” at the Site—the TCEQ started receiving complaints about the discharge of fluids onto the ground, and the storage of junk cars, various 55-gallon drums and scrap metal at the Site.

5.3 During investigations conducted in 2016 and 2018, TCEQ investigators observed that Rifenburg and Easley violated multiple state laws and TCEQ rules concerning municipal solid waste, hazardous waste, discharge of waste, and storage of used oil. Rifenburg and Easley refuse to clean up the Site and continue to accept waste at the Site, thus endangering human health and

welfare and the environment.

## **6. TCEQ Investigations**

### **March 2016 Investigation**

6.1 The Site is located approximately 2,000 feet west of Hanz Creek and 2,000 feet south of Swine Creek, both tributaries of the Guadalupe River. It is also located approximately 2.6 miles from Rebecca Creek, which feeds into Canyon Lake. When investigators visited the Site on March 29, 2016, they were accompanied through the Site by Easley. The investigators observed the following:

A. There were approximately 10,000 cubic yards of waste materials stored and/or disposed of into exposed, mixed piles in direct contact with surface soils or in unsecured containers at the Site. These materials covered nearly the entire 3.6-acre property and included household rubbish like appliances, furniture, carpeting, consumer electronics, and other sundries; automotive wastes like whole vehicles, engines, transmissions, suspension parts, body panels, scrap tires, and spent fluids; construction and demolition debris like scrap lumber, PVC pipe, and pallets; and commercial and/or industrial waste materials like cardboard, compressed gas cylinders, service station canopies, light fixtures, plastic computer housings, drums, and garden nursery pots. There were also multiple containers, some with petroleum substances, others with paint substances, and others with unknown substances. Some of the containers were open or unsecured and had discharged their contents onto the surface soils of the Site.

B. There were also approximately 100 broken and intact cathode ray tubes stored outside on the ground, 200 fluorescent lamps stored outside in piles and in open containers that

were not protected from being crushed or broken; and seven lead-acid batteries stored on a pallet outside without any protective cover.

C. There were various additional materials that could be Hazardous Waste including compressed gas cylinders; electronic computer consoles; circuit boards and other parts; and drums, buckets, cans and other containers of solvents, fuels, oils, chemicals, and other unknown substances stored outside at the Site.

D. There were approximately six five-gallon buckets and a small plastic drum, all containing used oil stored on the ground in an area to the north of the on-site shed at the Site. The containers did not have any labeling or marking as “Used Oil,” and appeared in poor condition and were discharging onto the ground.

### **March 2018 Investigation**

6.2 The TCEQ received additional complaints about the Site and conducted another investigation on March 20, 2018. Easley again accompanied TCEQ investigators as they investigated the Site. During their investigation, the investigators noticed an oily odor and observed that the piles of waste materials were much larger and higher than documented in the 2016 investigation. Investigators also observed the following:

A. The materials covering the property had nearly doubled from the 2016 investigation (now approximately 20,000 cubic yards of waste materials). Most of the waste materials were still stored and/or disposed of into exposed, mixed piles in direct contact with surface soils or in unsecured containers at the Site. Most of the materials were the same types of materials as in 2016 and included household rubbish like appliances, furniture, carpeting, consumer electronics;

automotive wastes such as a whole vehicle, a boat, engines, transmissions, suspension parts, body panels, scrap tires; construction and demolition debris like scrap lumber, PVC pipe, and pallets; and commercial and/or industrial waste materials like cardboard compressed gas cylinders, service station canopies, light fixtures, plastic computer housings, and drums. There were still multiple containers, some with petroleum substances, and others with unknown substances. Some of the containers were open or unsecured and had discharged their contents onto the surface soils of the Site.

B. There were still approximately 100 broken and intact cathode ray tubes stored outside on the ground and 200 fluorescent lamps stored outside in piles and in open containers that were not protected from being crushed or broken.

C. There were still various additional materials present that could be classified as Hazardous Waste including compressed gas cylinders; electronic computer consoles; circuit boards and other parts; and drums, buckets, cans and other containers of solvents, fuels, oils, chemicals, and other unknown substances stored outside at the Site.

D. There were still various containers with used oil stored on the ground at the Site. The containers did not have any labeling or marking as “Used Oil.”

E. There were additional waste materials that had accumulated outside of the fence at the Site, and along the frontage of US Highway 281. The materials extended into the highway right-of-way, creating a potential traffic hazard. These materials included plastic boxes, wood, cardboard, various used containers, and drums. In addition, there was an intermediate bulk container placed 20 feet from the right-of-way and on top of a storm water structure.

**7. Claim 1 - Civil Penalties for Violations of TCEQ Rules**

7.1 “A person who causes, suffers, allows, or permits a violation of a . . . rule” adopted pursuant to the TSWDA “shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$25,000 for each day of each violation.” Tex. Water Code § 7.102. Each day of a continuing violation is a separate violation. *Id.* The State requests that civil penalties be assessed against Defendant within the statutory range for each act and each day of violation, as set forth below.

**Unauthorized Storage of Waste.**

7.2 Under Tex. Water Code § 7.101 and 30 Tex. Admin. Code §§ 330.7(a) and 335.2, no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste, MSW, ISW, or MHW unless such activity is authorized by permit or other authorization from TCEQ.

7.3 On March 29, 2016, and March 20, 2018, TCEQ investigators observed at least 10,000 cubic yards of waste materials stored and/or disposed of at the Site including household rubbish, automotive materials, construction and demolition debris, commercial and/or industrial materials like compressed gas cylinders, and multiple containers with oil, petroleum substances and other unknown substances.

7.4 Therefore, Rifenburg as the owner of the Site, and Easley as operator of the Site, are in continuous violation of Tex. Water Code § 7.101 and 30 Tex. Admin. Code §§ 330.7(a) and 335.2. The violation continues from day to day on and from March 29, 2016 to and including the present and will continue from day to day in the future until Rifenburg and Easley comply with

the law. For each day of violation, Rifenburg and Easley are each liable for a civil penalty within the statutory range.

**Unauthorized Storage of MSW in a Manner that Causes Imminent Threat of Discharge to Waters in the State.**

7.5 Under Tex. Water Code § 7.101, 30 Tex. Admin. Code § 330.15(a) and Tex. Water Code § 26.121(a), no person may cause, suffer, allow or permit the unauthorized collection, handling storage, processing, and/or disposal of MSW in such a manner that causes the discharge or imminent threat of discharge of MSW into or adjacent to waters in the state.

7.6 The TCEQ observed that the Site is located approximately 2,000 feet west of Hanz Creek and 2,000 feet south of Swine Creek, both tributaries of the Guadalupe River. Further, the Site is located approximately 2.6 miles from Rebecca Creek, which feeds into Canyon Lake and the Canyon Reservoir, which provides surface water to the general public. On March 29, 2016, and March 20, 2018, TCEQ investigators observed at least 10,000 cubic yards of waste materials stored and/or disposed of at the Site in exposed, mixed piles in direct contact with surface soils or in unsecured containers.

7.7 Therefore, Rifenburg as the owner of the Site, and Easley as operator of the Site, are in continuous violation of Tex. Water Code § 7.101, 30 Tex. Admin. Code § 330.15(a) and (c) and Tex. Water Code 26.121(a). The violation continues from day to day on and from March 29, 2016 to and including the present and will continue from day to day in the future until Rifenburg and Easley comply with the law. For each day of violation, Rifenburg and Easley are each liable for a civil penalty within the statutory range.

**Unauthorized Storage of ISW or MHW in a Manner that Causes Imminent Threat of Discharge to Waters in the State.**

7.8 Under Tex. Water Code § 7.101, 30 Tex. Admin. Code §§ 335.2 and 335.4, and Tex. Water Code § 26.121(a), no person may cause, suffer, allow or permit the unauthorized collection, handling storage, processing, and/or disposal of ISW or MHW in such a manner that causes the discharge or imminent threat of discharge of ISW or MHW into or adjacent to waters in the state.

7.9 The TCEQ observed that the Site is located approximately 2,000 feet west of Hanz Creek and 2,000 feet south of Swine Creek, both tributaries of the Guadalupe River. Further, the Site is located approximately 2.6 miles from Rebecca Creek, which feeds into Canyon Lake and the Canyon Reservoir that provide surface water to the general public. On March 29, 2016, and March 20, 2018, TCEQ investigators observed approximately 100 cathode ray tubes, 200 fluorescent lamps and lead-acid batteries that were stored and/or disposed of outside on the ground at the Site. Investigators also observed other materials present at the Site that could be classified as Hazardous Waste including compressed gas cylinders; electronic computer consoles; circuit boards and other parts; and drums, buckets, cans and other containers of solvents, fuels, oils, chemicals, and other unknown substances.

7.10 Therefore, Rifenburg as the owner of the Site, and Easley as operator of the Site, are in continuous violation of Tex. Water Code § 7.101, 30 Tex. Admin. Code §§ 335.2 and 335.4, and Tex. Water Code § 26.121(a). The violation continues from day to day on and from March 29, 2016, to and including the present and will continue from day to day in the future until Rifenburg

and Easley comply with the law. For each day of violation, Rifenburg and Easley are each liable for a civil penalty within the statutory range.

**Failure to Conduct Hazardous Waste Determination and Waste Classifications.**

7.11 Under Tex. Water Code § 7.101, 30 Tex. Admin. Code §§ 335.62, 335.503 and 335.504, and 40 C.F.R. § 262.11, a person who causes, suffers, allows or permits the generation of solid waste must determine if that waste is hazardous and must classify any nonhazardous waste in accordance with TCEQ rules.

7.12 On March 29, 2016, and March 20, 2018, TCEQ investigators observed that neither Rifenburg nor Easley had conducted hazardous waste determinations for waste that could be hazardous such as compressed gas cylinders, electronic computer consoles and circuit boards, and containers of solvents, fuels, oils, chemicals, and other unknown substances.

7.13 Therefore, Rifenburg as the owner of the Site, and Easley as operator of the Site, are in continuous violation of Tex. Water Code § 7.101, 30 Tex. Admin. Code §§ 335.62, 335.503 and 335.504, and 40 CFR § 262.11. The violation continues from day to day on and from March 29, 2016 to and including the present and will continue from day to day in the future until Rifenburg and Easley comply with the law. For each day of violation, Rifenburg and Easley are each liable for a civil penalty within the statutory range.

**Failure to Properly Store and Label Used Oil.**

7.14 Under Tex. Water Code § 7.101, 30 Tex. Admin. Code § 324.1, and 40 C.F.R. § 279.22(b)(1)-(2) and (c)(1), a person who causes, suffers, allows or permits the management of used oil must comply with TCEQ rules and 40 Code of Federal Regulations Part 279 standards for

management of used oil.

7.15 On March 29, 2016, and March 20, 2018, TCEQ investigators observed that there were multiple containers storing used oil that were not marked or clearly labeled with the words “Used Oil” and that some had substances discharging onto the ground.

7.16 Therefore, Rifenburg as the owner of the Site, and Easley as operator of the Site, are in continuous violation of Tex. Water Code § 7.101, 30 Tex. Admin. Code § 324.1, and 40 C.F.R. § 279.22(b)(1)-(2) and (c)(1). The violation continues from day to day on and from March 29, 2016, to and including the present and will continue from day to day in the future until Rifenburg and Easley comply with the law. For each day of violation, Rifenburg and Easley are each liable for a civil penalty within the statutory range.

## **8. Claim 2 - Injunctive Relief**

8.1 The Attorney General, at the request of the TCEQ, may bring an action for injunctive relief if it appears that a violation or threat of a violation of a rule issued under the TCEQ’s statutory jurisdiction has occurred or is about to occur. Tex. Water Code § 7.032. As alleged above, Rifenburg and Easley are in violation of TCEQ rules regulating solid waste, industrial solid waste, municipal hazardous waste, and used oil. Therefore, the State seeks an appropriate injunctive order to prevent violations or threatened continuing violations and to obtain appropriate corrective actions.

8.2 No bond is required of the State prior to granting of an injunction as set forth in Tex. Water Code § 7.032(d) and Tex. Civ. Prac. Rem. Code § 6.001.

8.3 The State requests that this Court grant a temporary injunction against Rifenburg and Easley enjoining Rifenburg and Easley, their agents, employees, and all persons in active concert or participation with them, as follows:

**Words and Terms:**

8.4 As used in this Injunction, the following words and terms have the following meanings:

A. “Easley” means Defendant William P. Easley d/b/a We Recycle Texas and his agents, employees, and all persons in active concert or participation with him.

B. “Rifenburg” means Defendant Edward J. Rifenburg and his agents, employees, and all persons in active concert or participation with him.

C. “Site” means the property located at 13600 US Highway 281 North in Spring Branch, Comal County, Texas.

D. “TCEQ” means the Texas Commission on Environmental Quality.

E. “Days” means calendar days.

F. “Effective Date” means the date the Court signs this Injunction.

G. “Solid Waste” means any discard material, as further defined in 30 Tex. Admin. Code § 330.3(145). It includes but is not limited to household rubbish; automotive materials; construction and demolition debris; commercial and/or industrial materials like compressed gas cylinders; containers or drums with oil, petroleum substances, paint substances or any other substances; plastics or plastic boxes; empty drums or containers; cardboard or wood pieces; fluorescent lights; or cathode ray tubes.

H. “Hazardous Waste” means any Solid Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901, *et seq.*

**Ordering Provisions:**

8.5 Cease Accepting Solid Waste at the Site. Immediately upon the Effective Date of this Injunction, Rifenburg and Easley shall cease accepting any additional Solid Waste or Hazardous Waste, including used oil, at the Site. Rifenburg and Easley shall not accept any additional material at the Site for processing, storage or disposal regardless of whether the material can be recycled.

8.6 Cease the Release/Discharge of Used Oil and Other Waste. Immediately upon the Effective Date of this Injunction, Rifenburg and Easley shall cease the release and/or discharge of used oil and other petroleum or paint substances or other Solid Waste at the Site.

8.7 Conduct Waste Determination and Waste Classification. Within five Days of the Effective Date of this Injunction, Rifenburg and Easley shall begin conducting waste determinations and waste classifications on all Solid Waste at the Site, in accordance with 30 Tex. Admin. Code §§ 335.62, 335.503, 335.504, and 40 C.F.R. § 262.11. Within 60 Days of the Effective Date of this Injunction, Rifenburg and Easley shall complete waste determinations and waste classifications on all Solid Waste at the Site, and shall send supporting documentation to the TCEQ to demonstrate compliance with this provision.

8.8 Remove All Waste Located Outside of the Fence at the Site.

A. Within 10 Days of the Effective Date of this Injunction, Rifenburg and Easley shall package and label for disposal any Hazardous Waste located outside of the fence at the Site and on the frontage and/or right-of-way of US Highway 281 in accordance with all applicable TCEQ regulations, including, but not limited to, 30 Tex. Admin. Code §§ 335.65-.68. Within 15 Days of the Effective Date of this Injunction, Rifenburg and Easley shall dispose of all Hazardous Waste located outside of the fence at the Site and on the frontage and/or right-of-way of US Highway 281 at a TCEQ-permitted Hazardous Waste disposal facility.

B. Within 15 Days of the Effective Date of this Injunction, Rifenburg and Easley shall remove all remaining non-hazardous Solid Waste located outside of the fence at the Site and on the frontage and/or right-of-way of US Highway 281 and dispose of it at a TCEQ-permitted Solid Waste disposal facility.

8.9 Remove Waste with Potential to Discharge or Leach onto the Ground at the Site.

A. Within 30 Days of the Effective Date of this Injunction, Rifenburg and Easley shall package and label for disposal all Hazardous Waste at the Site with potential discharge or leach into the ground in accordance with all applicable TCEQ regulations, including, but not limited to, 30 Tex. Admin. Code §§ 335.65-.68. Within 45 Days of the Effective Date of this Injunction, Rifenburg and Easley shall remove all Hazardous Waste with potential discharge or leach into the ground, including, but not limited to, fluorescent light tubes, car batteries, compressed gas cylinders, old television screens and cathode ray tubes, and used oils from the Site and dispose of it at a TCEQ-permitted Hazardous Waste disposal facility.

B. Within 45 Days of the Effective Date of this Injunction, Rifenburg and Easley shall remove all remaining non-hazardous Solid Waste with potential discharge or leach into the ground from the Site and dispose of it at a TCEQ-permitted Solid Waste disposal facility.

C. Within 60 Days of the Effective Date of this Injunction, Rifenburg and Easley shall send documentation to TCEQ including receipts, photographs, and other evidence demonstrating compliance with this provision.

8.10 Remove all Waste at the Site.

A. Within 90 Days of the Effective Date of this Injunction, Rifenburg and Easley shall package and label for disposal all Hazardous Waste at the Site in accordance with all applicable TCEQ regulations, including, but not limited to, 30 Tex. Admin. Code §§ 335.65-.68. Within 105 Days of the Effective Date of this Injunction, Rifenburg and Easley shall remove all Hazardous Waste from the Site and dispose of it at a TCEQ-permitted Hazardous Waste disposal facility.

B. Within 105 Days of the Effective Date of this Injunction, shall remove all remaining non-hazardous Solid Waste from the Site and dispose of it at a TCEQ-permitted Solid Waste disposal facility.

C. Within 120 Days of the Effective Date of this Injunction, Rifenburg and Easley shall send documentation to TCEQ including receipts, photographs, and other evidence demonstrating compliance with this provision.

8.11 Begin Site Remediation.

A. Within thirty (30) days of the Effective Date of this Injunction, Rifenburg and Easley shall commence an affected property assessment of the Site to determine the lateral and

vertical extent of Hazardous Waste and non-hazardous Solid Waste released to the environment. The affected property assessment of the Site shall include classifying groundwater, determining land use, using analytical methods appropriate for the detection of spilled Hazardous Waste and non-hazardous Solid Waste at the Site, and notifying owners of property from which samples are collected, in accordance with the requirements of 30 Tex. Admin. Code Chapter 350, Subchapter C.

B. As part of the affected property assessment, Rifenburg and Easley shall determine critical protective concentration levels in accordance with the requirements of 30 Tex. Admin. Code Chapter 350, Subchapter D for use in delineating the extent of environmental media exceeding the critical protective concentration levels for which a response action will be required to render the Site protective of human health and the environment.

C. Within one hundred and eighty (180) days of the Effective Date of this Injunction, Rifenburg and Easley shall submit an administratively and technically complete Affected Property Assessment Report (“APAR”) using TCEQ Form 10325/APAR,<sup>1</sup> in accordance with the requirements of 30 Tex. Admin. Code § 350.91, to TCEQ for review and approval.

D. Within sixty (60) days of the date TCEQ approves the APAR, Rifenburg and Easley shall submit the administratively and technically complete response action plan (“RAP”) using TCEQ Form 10326,<sup>2</sup> in accordance with the requirements of 30 Tex. Admin. Code § 350.94, to

---

1 TCEQ Form 10325 may be obtained from TCEQ or at:  
<https://www.tceq.gov/assets/public/remediation/trrp/forms/10325.doc>

2 TCEQ Form 10326 may be obtained from TCEQ or at: <https://www.tceq.gov/assets/public/remediation/trrp/forms/10326.pdf>

TCEQ for review and approval. Rifenburg and Easley shall use the results of the APAR to develop a RAP that is capable of attaining the response objectives of 30 Tex. Admin. Code Chapter 350, Subchapter B. Rifenburg and Easley shall propose in the RAP detailed plans to attain either Remedy Standard A or Remedy Standard B at the Site. The RAP shall include a schedule for completion of each intermediate action in the RAP. The deadline for completion of the response action in the RAP shall be no later than one hundred and eighty (180) days after the date the TCEQ approves the RAP, unless extended by the TCEQ.

E. Rifenburg and Easley shall complete the response action in the RAP by the deadline listed in the approved RAP. All response actions in the RAP shall be completed in accordance with the requirements of 30 Tex. Admin. Code Chapter 350.

F. Within ninety (90) days of the approved date for completion of the response action, Rifenburg and Easley shall submit an administratively and technically complete Response Action Completion Report (“RACR”) using TCEQ Form 10328/RACR,<sup>3</sup> in accordance with the requirements of 30 Tex. Admin. Code § 350.95, to TCEQ for review and approval.

G. In the event TCEQ does not approve the APAR, RAP, RACR, or any other report or documentation submitted by Rifenburg and Easley pursuant to this Injunction, Rifenburg and Easley shall revise the documentation in accordance with TCEQ’s instructions and resubmit the material to TCEQ for review and approval within thirty (30) days of TCEQ’s notification that the

---

<sup>3</sup> TCEQ Form 10328 may be obtained from TCEQ or at:  
<https://www.tceq.texas.gov/assets/public/remediation/trrp/forms/10328.doc>

documentation is unsatisfactory.

H. Rifenburg and Easley shall comply with all applicable limitations or regulations in the event he elects to develop and implement a RAP under Remedy Standard B, in accordance with the requirements of 30 Tex. Admin. Code Chapter 350, Subchapter B, such as but not limited to post-response action care requirements, financial assurance, and institutional controls and reporting requirements.

8.12. All submissions required or authorized to be submitted to the TCEQ by this Injunction, shall be submitted in writing to:

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

with copies to:

Emily Petrick, Assistant Attorney General  
Re: AG # CX3926205853  
Office of the Attorney General  
Environmental Protection Division  
P.O. Box 12548, MC-066  
Austin, Texas 78711-2548

8.13 After final hearing in this case, the State asks that this Court permanently enjoin Defendants Rifenburg and Easley, their officials, agents, employees, contractors, and representatives, consistent with the terms of the proposed temporary injunction set out above.

## **9. Attorney's Fees and Costs**

9.1 Section 7.108 of the Texas Water Code authorizes the State to recover its

reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to this proceeding if the State ultimately prevails. Section 402.006 of the Texas Government Code also authorizes the State to recover its reasonable attorney's fees and court costs in a suit in which the State is entitled to recover penalties. The State seeks a judgment against Defendant for its attorney's fees, court costs, and investigative costs pursuant to these statutory provisions.

#### **10. Post-Judgment Interest**

**10.1** Under Tex. Fin. Code § 304.003, the State asks this Court to award the State post-judgment interest on all amounts awarded in relation to this proceeding, at the maximum rate allowed by law.

#### **Prayer**

WHEREFORE, the State respectfully requests:

1. That Defendants be cited to appear and answer herein;
2. That upon a temporary injunction hearing in this cause, temporary injunctive relief be granted against Defendants as requested above;
3. That upon trial, the Court grant a permanent injunction against Defendants as requested above;
4. That the Court grant judgment for appropriate civil penalties within the range allowed by law against Defendants as requested above;
5. That the State be awarded its reasonable attorney's fees, investigative costs, and all costs of court;
6. That the State be awarded post-judgment interest; and

7. That the State be awarded all such other and further relief, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

BRANTLEY STARR  
Deputy First Assistant Attorney General

JAMES E. DAVIS  
Deputy Attorney General for Civil Litigation

PRISCILLA M. HUBENAK  
Division Chief, Environmental Protection Division

/s/ Emily E. Petrick  
Emily E. Petrick  
Assistant Attorney General  
State Bar No. 24077709  
Emily.Petrick@oag.texas.gov

Ian Lancaster  
Assistant Attorney General  
State Bar No. 24097964  
Ian.Lancaster@oag.texas.gov

Office of the Attorney General of Texas  
Environmental Protection Division  
P.O. Box 12548, MC-066  
Austin, Texas 78711-2548  
Telephone: (512) 463-2012  
Facsimile: (512) 320-0911

COUNSEL FOR THE STATE OF TEXAS

**AFFIDAVIT**

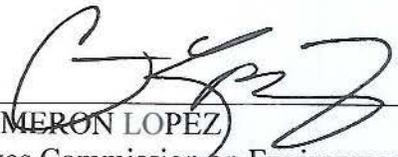
STATE OF TEXAS                    }  
  }  
COUNTY OF BEXAR                }

Before me, the undersigned notary, on this day personally appeared Cameron Lopez, a person whose identity is known to me. After I administered an oath to him, upon oath he said:

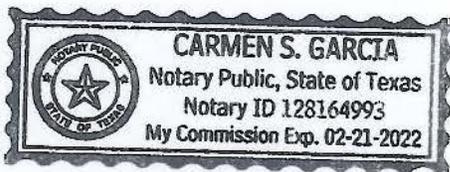
“My name is Cameron Lopez, I am over the age of eighteen years and of sound mind, capable of making this affidavit, and personally acquainted with the facts herein.

I am employed by the Texas Commission on Environmental Quality (TCEQ”) as Manager of the Waste Section in the San Antonio Regional Office, and I periodically conduct investigations of solid waste sites and facilities in Texas. In this capacity, I have the authority to make this affidavit. Furthermore, in this capacity, I am familiar with state law and TCEQ rules concerning solid waste, municipal solid waste, municipal hazardous waste and industrial hazardous waste.

I have read the foregoing Petition and Application for Injunctive Relief and am personally familiar with the facts alleged in paragraph 6.2. I gained my personal knowledge of those facts through observations made during my investigation of Site located at 13600 US Highway 281 North in Spring Branch, Comal County, Texas and my review of correspondence and other documents related to the Site. The facts alleged in those paragraphs are true and correct.”

  
\_\_\_\_\_  
CAMERON LOPEZ  
Texas Commission on Environmental Quality

SUBSCRIBED AND SWORN TO BEFORE ME on July 18, 2018,  
to certify which witness my hand and official seal.



Notary without Bond

(Seal)   
Notary Public in and for the State of Texas  
My commission expires: 2/21/22

# CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_ COURT (FOR CLERK USE ONLY): \_\_\_\_\_

STYLED State of Texas v. Edward J. Rifenburg and William P. Easley dba We Recycle Texas

(e.g. John Smith v. All American Insurance Co. In re Mary Ann Jones, In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:	Names of parties in case:	Person or entity completing sheet is:
Name: _____ Emily E. Petrick Address: _____ P.O. Box 12548, MC 066 City/State/Zip: _____ Austin, Texas 78711-2548 Signature: _____ /s/ Emily E. Petrick	Email: _____ Emily.Petrick@oag.texas.gov Telephone: _____ (512) 463-2012 Fax: _____ (512) 320-0911 State Bar No: _____ 24077709	Plaintiff(s)/Petitioner(s): State of Texas Defendant(s)/Respondent(s): Edward J. Rifenburg, and William P. Easley dba We Recycle Texas [Attach additional page as necessary to list all parties]
		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____
		Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____

**2. Indicate case type, or identify the most important issue in the case (select only 1):**

Civil		Family Law		
<b>Contract</b>	<b>Injury or Damage</b>	<b>Real Property</b>	<b>Marriage Relationship</b>	<b>Post-judgment Actions (non-Title IV-D)</b>
<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <b>Malpractice</b> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <b>Product Liability</b> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <b>Divorce</b> <input type="checkbox"/> With Children <input type="checkbox"/> No Children <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocal (UIFSA) <input type="checkbox"/> Support Order <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
<b>Employment</b>	<b>Other Civil</b>			
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input checked="" type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____			
<b>Tax</b>	<b>Probate &amp; Mental Health</b>			
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<b>Probate/Wills/Intestate Administration</b> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings		<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____	

**3. Indicate procedure or remedy, if applicable (may select more than 1):**

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input checked="" type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
---	---	--

**4. Indicate damages sought (do not select if it is a family law case):**

Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees  
 Less than \$100,000 and non-monetary relief  
 Over \$100,000 but not more than \$200,000  
 Over \$200,000 but not more than \$1,000,000  
 Over \$1,000,000



# SERVICE REQUEST FORM

**VELVA L. PRICE**

District Clerk, Travis County  
Civil Division (512) 854-9457

### REQUESTED BY:

**ATTORNEY/FILER:** Emily E. Petrick / Irene Tong

**SUBMITTED BY:** Irene Tong

**PHONE #:** (512) 463-2012

**TITLE:** Legal Assistant

**EMAIL:** Emily.Petrick@oag.texas.gov / irene.tong@oag.texas.gov **SIGNATURE:** /s/ Irene Tong

### ISSUE PROCESS FOR:

**CAUSE #:**

**CASE STYLE:** *State of Texas v. Edward J. Rifenbury and William P. Easley dba We Recycle Texas*

### QUICK CITATION REQUEST: (FOR SERVICE OF CITATION ON ALL DEFENDANTS BY PERSONAL)

ISSUE CITATION TO ALL DEFENDANTS LISTED IN THE ORIGINAL PETITION AT THE ADDRESS SPECIFIED IN THE PETITION AND FORWARD THE CITATION(S) TO THE FOLLOWING:

- TRAVIS CO. CONSTABLE (specify):
  CERTIFIED MAIL BY CLERK
  ATTORNEY/REQUESTER  
 PRIVATE PROCESS AGENCY (specify):
  I HAVE INCLUDED ATTACHMENTS TO THIS REQUEST (e.g. DISCOVERY) TO INCLUDE

### DETAILED SERVICE REQUEST: (ON PARTICULAR PARTIES, BY VARIOUS DELIVERY METHODS, OR FOR NON-CITATION)

**DESCRIPTION OF INSTRUMENT(S) TO BE SERVED:**

I HAVE INCLUDED ATTACHMENTS TO THIS REQUEST (e.g. discovery) TO INCLUDE IN THE CITATION

**TYPE OF PROCESS TO ISSUE:**
 CITATION
  CERTIFIED NOTICE
  PROTECTIVE ORDER\*
  TRO\*^
  INJUNCTION\*^
  SEQUESTRATION\*^
  ATTACHMENT\*
  EXECUTION\*
  ABSTRACT\*
  SUPERSEDEAS^
  SCIRE FACIAS\*
  OTHER^

\*SPECIFY TITLE AND DATE OF UNDERLYING ORDER IN CASE RECORD:

^ATTACH A COPY OF BOND AND/OR OTHER SUPPORTING DOCUMENT

### SERVICE TO BE ISSUED:

**PARTY NAME:** Edward J. Rifenbury

**PARTY TYPE:** Defendant

USE ADDRESS IN ORIGINAL PETITION  SECRETARY OF STATE

OTHER ADDRESS:

**EMAIL PROCESS TO:**

TRAVIS CO. CONSTABLE  
 ATTORNEY/REQUESTOR  
 PRIVATE PROCESS AGENCY:  
 Process Agency Name:

**SERVE VIA:**

PERSONAL SERVICE  
 CERTIFIED MAIL (BY CONSTABLE)  
 CERTIFIED MAIL (BY CLERK)  
 CITATION BY POSTING\*  
 CITATION BY PUBLICATION\*

**PARTY NAME:** William P. Easley

**PARTY TYPE:** Defendant

USE ADDRESS IN ORIGINAL PETITION  SECRETARY OF STATE

OTHER ADDRESS:

**EMAIL PROCESS TO:**

TRAVIS CO. CONSTABLE  
 ATTORNEY/REQUESTOR  
 PRIVATE PROCESS AGENCY:  
 Process Agency Name:

**SERVE VIA:**

PERSONAL SERVICE  
 CERTIFIED MAIL (BY CONSTABLE)  
 CERTIFIED MAIL (BY CLERK)  
 CITATION BY POSTING\*  
 CITATION BY PUBLICATION\*

**PARTY NAME:**

**PARTY TYPE:**

USE ADDRESS IN ORIGINAL PETITION  SECRETARY OF STATE

OTHER ADDRESS:

**EMAIL PROCESS TO:**

TRAVIS CO. CONSTABLE  
 ATTORNEY/REQUESTOR  
 PRIVATE PROCESS AGENCY:  
 Process Agency Name:

**SERVE VIA:**

PERSONAL SERVICE  
 CERTIFIED MAIL (BY CONSTABLE)  
 CERTIFIED MAIL (BY CLERK)  
 CITATION BY POSTING\*  
 CITATION BY PUBLICATION\*

\*THIS TYPE OF SERVICE MAY REQUIRE A COURT ORDER. ENTER DATE OF SERVICE ORDER IN CASE RECORD:

ADDITIONAL INSTRUCTIONS FOR CLERK OR FOR OFFICER SERVING PROCESS:

**FOR ADDITIONAL PARTIES TO BE SERVED, USE e-FILED PROCESS ISSUANCE REQUEST FORM ADDENDUM**