

Martin, Dugan & Martin



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(*Also licensed in Texas)

June 20, 2011

FIRST CLASS MAIL ONLY

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Mr. Earle A. "Rusty" Herbert (6RC-EW)
EPA Houston Lab
10625 Fallston Road
Houston, Texas 77099

ELECTRONIC MAIL ONLY

Ms. Thea Lomax
Water Enforcement Branch (6EN-WM)
EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
Lomax.thea@epa.gov

Re: In the Matter of C & B Recycling, Administrative Complaint (CWA-06-2011-1765)

Ladies and Gentlemen:

Enclosed please find Respondent's Answer to Administrative Complaint & Request for Hearing.

Thank you.

Very truly yours,
MARTIN, DUGAN AND MARTIN


Tisha Tupper
Legal Assistant for Lane T. Martin

/tlt
Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
2011 JUN 22 PM 3:44
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF : Docket No. CWA-06-2011-1765
: :
C & B RECYCLING, : Proceeding To Assess A Class I
a New Mexico Company, : Civil Penalty Under Section 309(g)
Respondent. : Of The Clean Water Act
: :
Facility No.: NMU001702 : ADMINISTRATIVE COMPLAINT

ANSWER TO ADMINISTRATIVE COMPLAINT & REQUEST FOR HEARING

COMES NOW, the Respondent, C & B Recycling, by and through its attorneys, the Martin, Dugan and Martin Law Firm, and for its *Answer To Administrative Complaint & Request For Hearing* states:

1. Paragraph 1 of the Complaint is admitted.
2. Paragraph 2 of the Complaint is admitted. Respondent further states that it is an extremely small operation, owned by a husband and wife, with a total of two employees.
3. Paragraph 3 of the Complaint is denied to the extent it alleges the Respondent has in fact polluted the waters of the United States.
4. Paragraph 4 of the Complaint is denied to the extent it alleges the Respondent has in fact polluted the waters of the United States.
5. Paragraph 5 of the Complaint contains a legal conclusion. It does not require an admission or denial.
6. Paragraph 6 of the Complaint contains a legal conclusion. It does not require an admission or denial.

7. Paragraph 7 of the Complaint contains a legal conclusion. It does not require an admission or denial.
8. Paragraph 8 of the Complaint contains a legal conclusion. It does not require an admission or denial.
9. Paragraph 9 of the Complaint contains a legal conclusion. It does not require an admission or denial. Nevertheless, the Respondent does not process/recycle materials at the facility. They take in cans, aluminum, and steel from residence of Carlsbad, New Mexico. Many of the materials are kept in large containers and not left on the ground. The materials brought in are then shipped out to be recycled. No processing or recycling of the materials occurs at the facility.
10. Paragraph 10 of the Complaint contains a legal conclusion. It does not require an admission or denial. Nevertheless, the Respondent does not process/recycle materials at the facility. They take in cans, aluminum, and steel from residence of Carlsbad, New Mexico. The materials brought in are then shipped out to be recycled. No processing or recycling of the materials occurs at the facility.
11. Paragraph 11 of the Complaint is denied. The Respondent is not a point source as that term is defined and been interpreted under the law.
12. Paragraph 12 of the Complaint is denied. The Respondents denies it has in any way polluted the waters of the United States. Respondent obtained the NPDES Permit in 1997 attached at Exhibit "A". It was not aware of any expiration of that Permit until late 2010. At that time it immediately sought a new permit. Attached at Exhibit "B" is the acknowledgment from the EPA NOI Processing Center confirming the

Respondent's application. The Respondent also does not process any materials at this facility.

13. Paragraph 13 of the Complaint is denied. Prior to Respondent's operation of this business this location was a scrap yard. The Respondent started the current business in or around 1996. This Complaint also does not describe Respondent's operations accurately as it does not "recycle" at this facility.

14. Paragraph 14 of the Complaint is admitted to the extent the Respondent was required to have and renew its permit. Respondent obtained a NPDES Permit in 1997. (Exhibit "A"). It was not aware of any expiration of that Permit until late 2010. At that time it immediately sought a new permit. Attached at Exhibit "B" is the acknowledgment from the EPA NOI Processing Center confirming the Respondent's application.

15. Paragraph 15 of the Complaint is admitted. The Respondent states that the inspector notes unsatisfactory entries on his Report that he never inspected. The inspector:

- a. Never requested records or reports. The Respondent does in fact have a SWPPP and other documents required under the old permit.
- b. Respondent does not know what the inspector means by his "Unsatisfactory" marks on the NPDES Compliance Inspection Report.

16. Respondent denies Paragraph 16 of the Complaint. The Respondent has submitted a NOI to renew its storm water permit coverage. Respondent denies it was or has been discharging pollutants into the Pecos River. Respondent is also without information to admit or deny the allegations regarding rainfall data, but states that according to the Western Regional Climate Center the total average precipitation is

12.90 inches a year since 1900. Carlsbad, New Mexico is currently experiencing a severe drought with .005 inches rainfall since September 2010.

17. Respondent denies Paragraph 17 of the Complaint.

18. Respondent denies Paragraph 18 of the Complaint.

19. Respondent denies Paragraph 19 of the Complaint because it is without information to admit or deny this allegation.

20. Respondent denies Paragraph 20 of the Complaint because it is without information to admit or deny this allegation.

21. Respondent denies Paragraph 21 of the Complaint.

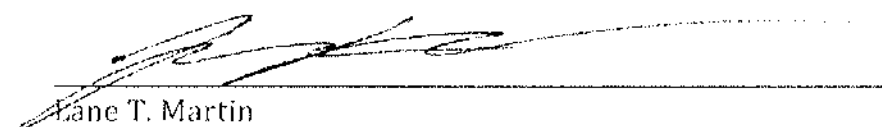
22. Respondent states no penalty should be assessed. Paragraphs 22 and 23 of the Complaint are therefore denied to the extent they alleges a penalty should be assessed or that the Respondent has polluted the waters of the United States.

23. Paragraphs 24 through 33 do not contain allegations and therefore no response is required. To the extent these Paragraphs allege or imply Respondent polluted the waters of the United States they are denied.

24. Respondent requests a hearing on this Matter.

WHEREFORE, the Respondent prays a hearing be conducted on the allegations in the Complaint, and that the Complaint be denied and that no fines, penalties, or other assessments be assessed against it.

Submitted by:
MARTIN, DUGAN AND MARTIN



Lane T. Martin
W.T. Martin Jr.
Kenneth D. Dugan

P.O. Box 2168
Carlsbad, New Mexico 88221-2168
(575) 887-3528
Attorneys for the Respondent C & B Recycling

Certificate of Service

I, Lane T. Martin, hereby certify that a true and correct copy of this Answer and Request For Hearing was mailed/e-mailed to the following:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Mr. Earle A. "Rusty" Herbert (6RC-EW)
EPA Houston Lab
10625 Fallston Road
Houston, Texas 77099

Ms. Thea Lomax
Lomax.thea@epa.gov

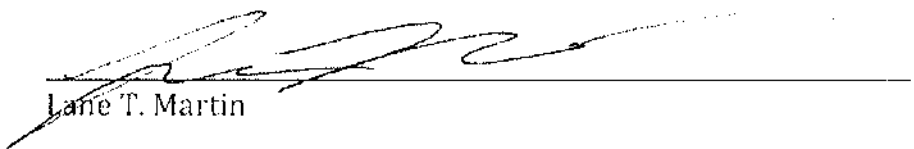

Lane T. Martin

EXHIBIT “A”

EXHIBIT “A”

EXHIBIT “A”



U.S. ENVIRONMENTAL PROTECTION AGENCY
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
STORM WATER MULTI-SECTOR GENERAL PERMIT COVERAGE NOTICE

September 19, 1997

Dear Operator:

Your Notice of Intent (NOI) for the facility noted below has been processed by the U.S. Environmental Protection Agency. This facility is authorized to discharge storm water associated with industrial activity under the terms and conditions imposed by EPA's NPDES storm water multi-sector general permit issued for use in the state of New Mexico. Your facility's NPDES multi-sector storm water general permit number is NMR05A191.

EPA's storm water multi-sector general permit requires certain storm water pollution prevention and control measures, possible monitoring and reporting, and annual inspections. Among the conditions and requirements of this permit, you must prepare and implement a pollution prevention plan (PPP) that is tailored to your industrial site. Enclosed is a summary guidance document designed to assist you in the development and implementation of your PPP. The summary is organized according to the phases of the pollution prevention planning process. As a facility authorized to discharge under this storm water multi-sector general permit, all terms and conditions must be complied with to maintain coverage and avoid possible penalties.

FACILITY:

C & B Recycling
1702 E Greene St
Carlsbad, NM 88220-

SE, 33, 021S 027E

OPERATOR:

Charles Soules
1702 E Greene St
Carlsbad
NM 88220-

To obtain a copy of the multi-sector general permit terms and conditions to which you are now held accountable, please call the EPA Office of Water Resource Center at (202)260-7786. If you have general questions concerning the storm water program, please call the EPA Region 06 contact: StormwaterHotline, (800)245-6510.

EXHIBIT “B”

EXHIBIT “B”

EXHIBIT “B”

From: NOI Call Center <no_reply@epa.gov>
Subject: **NOI Waiting Period End Confirmation**
Date: January 28, 2011 6:28:01 PM MST
To: bea@pvtln.net

Company: C B Recycling, LLC
ATTN: Bea Soules
PO Box 3020,
Carlsbad, New Mexico 88220

Facility: C B Recycling, LLC
1702 E. Greene,
Carlsbad, New Mexico 88220

TRACKING NUMBER: NMR05H869

This email acknowledges that a complete Notice of Intent (NOI) form seeking coverage under EPA's Industrial Multi-Sector General Permit (MSGP) is now active. Your NOI was completed and submitted on 12/29/2010. Coverage under this permit began at the conclusion of your 30 DAY waiting period on 01/28/2011, unless otherwise notified by EPA.

For tracking purposes, the following number has been assigned to your Notice of Intent Form: NMR05H869. Attached to this email, you will find an electronic copy of your completed NOI which should be posted at your site.

As stated above, this email acknowledges receipt of a complete Notice of Intent. However, it is not an EPA determination of the validity of the information you provided. Your eligibility for coverage under this Permit is based on the validity of the certification you provided. Your electronic signature on this form certifies that you have read, understood, and are implementing all of the applicable requirements. An important aspect of this certification requires that you have correctly determined whether you are eligible for coverage under this permit.

As you know, the MSGP requires you to have developed and begun implementing a Stormwater Pollution Prevention Plan (SWPPP). It also outlines important inspection and record keeping requirements. You must also comply with any additional location-specific requirements applicable to your state or tribal area. A copy of the MSGP must be kept with your SWPPP. An electronic copy of the MSGP and additional guidance materials can be viewed and downloaded at <http://www.epa.gov/npdes/stormwater>.

If you have general questions regarding the stormwater program or your responsibilities under the MSGP, please call:

EPA Region 6

Regional Contact Name: Brent Larsen Regional Contact Phone: (214) 665-7523

If you have questions about your form, please call the EPA NOI Processing Center at 1-866-352-7755 (toll free) or send an inquiry via the online form at <http://www.epa.gov/npdes/stormwater/noicontact>.

If you have difficulty accessing CDX, please contact the CDX Help Desk at: (888) 890-1995.

You can return to the eNOI system using the following link at any time <https://cdx.epa.gov/SSL/cdx/login.asp>.

EPA NOI Processing Center
Operated by Avanti Corporation
1200 Pennsylvania Ave., NW
Mail Code: 4203M
Washington, DC 20460
1-866-352-7755