



State of New Jersey

CHRIS CHRISTIE  
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF LICENSING OPERATIONS, SOLID WASTE & PESTICIDE ENFORCEMENT  
BUREAU OF SOLID WASTE COMPLIANCE AND ENFORCEMENT

BOB MARTIN  
Commissioner

KIM GUADAGNO  
Lt. Governor

9 EWING STREET, MAIL CODE 09-01  
P.O. BOX 420  
TRENTON NJ 08625-0420  
Tel. (609) 292-6305  
Fax. (609) 292-4539

**CERTIFIED MAIL/RRR and Hand Delivered 11/20/13**  
**7012 2210 0001 5144 1816**

Received by: \_\_\_\_\_

November 20, 2013

Mr. Theodore Fiore  
T FIORE RECYCLING CORP  
411 Wilson Ave  
Newark, NJ 07105

**RE: ADMINISTRATIVE ORDER AND NOTICE OF CIVIL ADMINISTRATIVE  
PENALTY ASSESSMENT**

T FIORE RECYCLING CORP  
411 Wilson Avenue  
Newark, NJ 07105  
EA ID #: PEA130004 - 132148

Dear Mr. Fiore:

Enclosed for service upon you is an Administrative Order and Notice of Civil Administrative Penalty Assessment issued by the Department pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and/or the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq.

The Department may be available to meet informally with the principals of the case to discuss the enclosed enforcement action. **PLEASE CONTACT BEN SALAHI OF MY STAFF WITHIN 30 DAYS UPON RECEIPT OF THIS AONOCAPA TO ARRANGE FOR SUCH A MEETING OR WITH ANY QUESTIONS AT 609-571-8432.** Should such a meeting be requested and granted, be advised this does not affect the time frame within which you may request an administrative hearing under the **NOTICE OF RIGHT TO A HEARING** provision in the enclosed Notice of Civil Administrative Penalty Assessment.

Sincerely,

Tom Farrell, Chief  
Bureau of Solid Waste Compliance & Enforcement

Enclosure



State of New Jersey

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IN THE MATTER OF

THEODORE FIORE
INDIVIDUALLY,
T. FIORE RECYCLING CORP.
AND T. FIORE DEMOLITION
INC.
411 Wilson Ave.
Newark, NJ 07105

:
: ADMINISTRATIVE ORDER
: AND
: NOTICE OF CIVIL ADMINISTRATIVE
: PENALTY ASSESSMENT
:

EA ID # PEA-130004 - 132148

This Administrative Order and Notice of Civil Administrative Penalty Assessment (hereinafter "AONOCAPA") is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "NJDEP" or the "Department") by N.J.S.A. 13:1D-1 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and/or the Solid Waste Utility Control Act N.J.S.A. 48:13A-1 et seq., and duly delegated to the Assistant Commissioner, Compliance & Enforcement, pursuant to N.J.S.A.13:1B-4.

FINDINGS

- 1. Theodore Fiore, T. Fiore Recycling Corp. and T. Fiore Demolition Inc., hereinafter referred to as RESPONDENTS are the owners and/or operators of a permitted Class B Recycling Center located at 411 Wilson Ave., Block 5020 and Lots 69.03, 69.04, 69.05 and 69.06, Newark City, Essex County, New Jersey (ID# 132148). The revoked Class B Permit only pertains to Lot 69.03. The Recycled Concrete Aggregate (RCA) pile currently stored on Lots 69.04, 69.05 and 69.06 was placed there without DEP approval.
2. Pursuant to N.J.A.C. 7:26-1.4, a "solid waste facility" means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste...

3. As the result of compliance evaluations conducted on 02/09/2011, 03/09/2011, 04/29/2011, 06/27/2011, 07/27/2011, 09/15/2011, 02/08/2012, 03/02/2012, 04/24/2012, 07/18/2012, 03/25/2013, and 08/19/2013 the Department has determined that RESPONDENTS failed to comply with applicable requirements as follows:

Requirement: Pursuant to N.J.A.C. 7:26A-3.1(a), all persons issued a general approval to operate a recycling center for Class B, Class C and/or Class D recyclable material pursuant to N.J.A.C. 7:26A-1 et seq. shall comply with all conditions of the approval [N.J.A.C. 7:26A-3.1(a)]

Description of Noncompliance: Failure to comply with multiple approval conditions as described in the following paragraphs (note, no specific penalty is assessed for this general violation as each individual violation noted below has penalties assessed as appropriate).

Requirement: Pursuant to N.J.A.C. 7:26A-3.10(a), the holder of this general approval shall obtain prior approval from the Department for any modification of the general approval [N.J.A.C. 7:26A-3.10(a)]

Description of Noncompliance: Failure to comply with modification requirements (permit conditions #10 & 11). Specifically, a corral for horses is still situated at the southeast corner of site 1. Three horses and three ponies were observed inside of the holding pen constructed in the middle of site 1. Additionally, a new road through the eastern side of Site 1 for access to site 2 has been constructed without approval for the modification.

Requirement: Pursuant to N.J.A.C. 7:26A- 3.5(e), if at any time, the amount of unprocessed material (concrete, concrete block, asphalt and asphalt millings, cinder block and brick) stored on-site exceeds 30,314 cubic yards (C.Y.), the recycling center shall immediately cease receiving any unprocessed material until the amount of unprocessed material stored on-site falls below 30,314 cubic yards (however, since such material has been stored for greater than one year, all such material shall be removed as addressed in the Requirement following this paragraph below). [N.J.A.C. 7:26A-3.5(e)]

Description of Noncompliance: The operator continued to receive additional unprocessed material despite having exceeded the permitted volume. This violation was repeated during inspections on: 02/09/2011, 03/09/2011, 04/29/2011, 06/27/2011, 07/27/2011, 07/18/2012, 03/25/2013 and 08/19/2013.

Requirement: Pursuant to N.J.A.C. 7:26A-3.9(b), do not store unprocessed Class B recyclable material in its unprocessed form on site 1, for more than one (1) year. [N.J.A.C. 7:26A-3.9(b)]

Description of Noncompliance: Storing unprocessed material in its unprocessed form for more than one year. Specifically, the work on the unprocessed pile #1 on site 1 has consistently been conducted above the 30' height level for more than one year. The operator has exceeded the 30' permitted height by an additional 45 feet. This

violation was repeated during inspections on: 02/09/2011, 03/09/2011, 04/29/2011, 06/27/2011, 07/27/2011, 07/18/2012, 03/25/2013 and 08/19/2013.

Requirement: Pursuant to N.J.A.C. 7:26A- 3.5(e), the total amount of unprocessed Class B recyclable material (concrete, concrete block, asphalt and asphalt millings, cinder block and brick) stored on-site shall not exceed 30,314 cubic yards. Unprocessed recyclable materials stored on-site shall be stored only in the areas designated as Pile 1 and Pile 3 as indicated on the approved site plan drawing. [N.J.A.C. 7:26A-3.5(e)]

Description of Noncompliance: The operator exceeded the permitted volume of unprocessed material of 30,314 C.Y. This violation was repeated during inspections on: 02/09/2011, 03/09/2011, 04/29/2011, 06/27/2011, 07/27/2011, 07/18/2012, 03/25/2013 and 08/19/2013. The volume for pile #1 at the time of inspection on 08/19/2013 was approximately 173,955 C.Y.

Requirement: Pursuant to N.J.A.C. 7:26A-3.1(a), the operator must fulfill its financial obligation for the payment of fees to the Department. [N.J.A.C. 7:26A-3.1(a)]

Description of Noncompliance: Failure to fulfill financial obligations to the Department. Specifically, as of 09/18/2013 the operator owes the Department a total of \$ 85,583.50 in outstanding fees and adjudicated penalties. This violation was repeated during inspections on: 02/08/2012, 07/18/2012, 03/25/2013 and 08/19/2013.

Requirement: Pursuant to N.J.A.C. 7:26A- 3.5(e), the owner or operator of a tire recycling center shall take all necessary steps to ensure that no mosquito colony formation or development is allowed to occur on the recycling center site. [N.J.A.C. 7:26A-3.5(e)]

Description of Noncompliance: The operator has failed to prevent mosquito formation colonies by not properly covering and storing a pile of tires on Site 2. This violation was observed during the inspection on 08/19/2013.

Action: On 05/23/2011, 08/02/2011, 08/15/2011, 10/18/2011, 03/05/2012, 04/20/2012, 05/07/2012, 08/17/2012, 04/04/2013 and 10/11/2013, the Department issued Notices of Violation to T FIORE RECYCLING CORP for these violations. The Department afforded a period of time to correct these violations before a penalty would be assessed. The Department conducted a follow-up compliance evaluation on **06/27/2011, 07/27/2011, 09/15/2011, 02/08/2012, 03/02/2012, 04/24/2012, 07/18/2012, 03/25/2013, 8/19/2013 and 10/30/2013** and determined that these violations had not been corrected.

4. As the result of compliance inspections conducted on **04/29/2011, 06/27/2011, 07/27/2011, 09/15/2011, 02/08/2012, 03/02/2012, 04/24/2012, 07/18/2012, 03/25/2013 and 8/19/2013**, the Department has determined that RESPONDENTS have not achieved compliance with the violations listed in paragraph 3 above.

5. Based on the facts set forth in these FINDINGS, the Department has determined that RESPONDENTS have violated the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and/or the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq. and the regulations promulgated pursuant thereto, specifically, N.J.A.C. 7:26A-3.1(a), N.J.A.C. 7:26A-3.5(e), N.J.A.C. 7:26A-3.9(b) and N.J.A.C. 7:26A-3.10(a).

**ORDER**

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

6. RESPONDENTS shall comply with the following:
- a) For those items where a compliance date is not noted in items b through h below, provide a Compliance Plan with a proposed schedule within 15 days upon receipt of this document.
  - b) In the event that RESPONDENTS' Class B Recycling Permit remains in effect, within 30 days submit a revised Site Plan that reflects compliance with this order or otherwise notify the Department that the Class B Recycling Permit has been forfeited.
  - c) Upon receipt of this Order, cease receiving additional unprocessed material and commence with the removal of all unprocessed material that has been staged for more than one year or that has been placed on top of unprocessed material that has been staged for more than one year. This will require, but is not limited to, that RESPONDENTS remove all of Pile # 1 to a volume of zero, which shall be accomplished within 30 days upon receipt of this Order. Prior to any removal, RESPONDENTS must notify the Department's Bureau of Solid Waste Compliance & Enforcement of the proposed final destination for all such materials. In the event that RESPONDENTS' Class B Recycling Permit is not forfeited or otherwise remains in effect, RESPONDENTS may petition the Department to resume taking in such material once compliance has been achieved.
  - d) Fulfill financial obligations to the Department. Specifically, as of 09/18/2013 the operator owes the Department a total of \$ 85,583.50 in outstanding fees and adjudicated penalties. Remain current with fees and/or penalties as they occur. RESPONDENTS shall make full payment in the amount of \$85,583.50 within 30 days upon receipt of this Order which is separate from and in addition to penalties noted in paragraph 6.
  - e) Immediately upon receipt of this document, prevent mosquito formation colonies by properly covering and storing the pile of tires on Site 2.

This Order shall be effective upon receipt by RESPONDENTS or someone on the violators' behalf authorized to accept service.

**NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT**  
**AND**  
**NOTICE OF RIGHT TO A HEARING**

7. Pursuant to N.J.S.A. 13:1E-9e and/or N.J.S.A. 14:13A-12(b), and based upon the above FINDINGS, the Department has determined that a civil administrative penalty is hereby assessed against RESPONDENTS in the amount of **\$2,632,858**. The Department's rationale for the civil administrative penalty is set forth in the enclosed Penalty Assessment Worksheets, and incorporated herein.
8. Pursuant to N.J.S.A. 13:1E-1 et seq. the Department may, in addition to any other civil administrative penalty assessed, include as a civil administrative penalty the economic benefit (in dollars) which a violator has realized as a result of not complying with, or by delaying compliance with, the requirements of the Act.
9. Pursuant to N.J.S.A. 48:13-A-1 et seq., should the Department determine a solid waste collector has charged excessive rates, the Department can order the collector to pay a refund to all affected customers.
10. Pursuant to N.J.S.A. 52:14B-1 et seq., and N.J.S.A. 13:1E-9(e), RESPONDENTS are entitled to request a hearing. RESPONDENTS shall, in their request for a hearing, complete and submit the enclosed **ADMINISTRATIVE HEARING REQUEST AND CHECKLIST TRACKING FORM** along with all required information. Submittal or granting of a hearing request does not stay the terms or effect of this AONOCAPA.
11. If no request for a hearing is received within twenty (20) calendar days from receipt of this AONOCAPA, it shall become a Final Order upon the twenty-first (21st) calendar day following its receipt, and the penalty shall be due and payable.
12. If a timely request for a hearing is received, payment of the penalty is due when RESPONDENTS receive a notice of the denial of the request, or, if the hearing request is granted, when RESPONDENTS withdraw the request or abandons the hearing, or, if the hearing is conducted, when RESPONDENTS receive a final decision from the Commissioner in this matter.
13. Payment shall be made by check payable to Treasurer, State of New Jersey and shall be submitted along with the enclosed Enforcement Invoice to:

Department of Treasury  
Division of Revenue, P.O. Box 417  
Trenton, NJ 08646-0417

**GENERAL PROVISIONS**

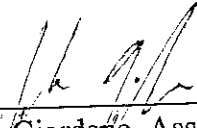
14. This AONOCAPA is binding on RESPONDENTS, their principals, directors, officers, agents, successors, assigns, employees, tenants, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.

15. No obligations imposed by this AONOCAPA are intended to constitute a debt which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare and the environment.
16. This AONOCAPA is issued only for the violations identified in the FINDINGS hereinabove and that violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted. By issuing this AONOCAPA, NJDEP does not waive its rights to initiate additional enforcement actions.
17. Neither the issuance of this AONOCAPA nor anything contained herein shall relieve RESPONDENTS of the obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.
18. Pursuant to N.J.S.A. 13:1E-9e, NJDEP is authorized to assess a civil administrative penalty of not more than \$50,000 for each violation, and each day during which the violation continues shall constitute an additional, separate and distinct offense.
19. Pursuant to N.J.S.A. 13:1E-9f, any person who violates the provisions of N.J.S.A. 13:1E-1 et seq. or any code, rule, or regulation promulgated pursuant thereto shall be liable to a penalty of not more than \$50,000 per day to be collected in a civil action, and any person who violates an Administrative Order issued pursuant to N.J.S.A. 13:1E-9c, including this Administrative Order, or a Court Order issued pursuant to N.J.S.A. 13:1E-9d, or who fails to pay a civil administrative penalty assessed pursuant to N.J.S.A. 13:1E-9e in full after it is due is subject upon order of a court to a civil penalty not to exceed \$100,000 per day of such violations. Each day during which the violation continues constitutes an additional, separate and distinct offense.
20. Pursuant to N.J.S.A. 13:1E-12, the Department, after hearing may revoke or suspend the registration issued to any person engaged in solid waste collection or solid waste disposal, including hazardous waste collection or disposal, upon a finding that such a person has violated any provision of the Solid Waste Management Act, or any rule, regulation, or Administrative Order, or has violated any provision of the laws related to pollution of the waters, air or land surfaces of the State; or has refused or failed to comply with any lawful order of the Department.
21. Pursuant to N.J.S.A. 13:1E-134(a) and N.J.S.A. 52:14B-1 et seq., the Department may revoke a solid or hazardous waste license based upon an accumulation of refusals or failures to comply with the Solid Waste Management Act, or any code, rule, regulation or Administrative Order which may constitute "unreliability".
22. Pursuant to N.J.S.A. 48:13A-12(b), any person who shall violate any provisions of the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., or the Solid Waste Collection Regulatory Reform Act, N.J.S.A. 48:13A-7 et seq., or any rule, regulation or Administrative Order adopted or issued pursuant thereto, including an interdistrict, intradistrict or interstate waste flow order, or who shall engage in the solid waste collection or solid waste disposal business without having been issued a Certificate of Public Convenience and Necessity, shall be liable to a penalty of not more than \$10,000 for a first offense, not more than \$25,000 for a second offense and not more

than \$50,000 for a third and every subsequent offense. Each day during which the violation continues constitutes an additional, separate and distinct offense.

23. Notice is further given that, pursuant to N.J.S.A. 48:13A-12(c), whenever it shall appear to the Department, a municipality, local board of health, or county health department, as the case may be, that any person has violated, intends to violate, or will violate any provision of the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., or the Solid Waste Collection Regulatory Reform Act, N.J.S.A. 48:13A-7.1 et seq., or any rule, regulation or Administrative Order adopted or issued pursuant thereto, the Department, the municipality, local board of health or county health department may institute a civil action in the Superior Court for injunctive relief and for such order relief as may be appropriate in the circumstances and the court may proceed in any action in a summary manner.
24. Notice is further given that, pursuant to the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., specifically N.J.S.A. 48:13A-12(a), any person or officer or agent thereof who shall knowingly violate any of the provisions of this Act or aid or advise in such violation, or who, as principal, manager, director, agent, servant, or employee knowingly does any act comprising a part of such violation, is guilty of a crime of the fourth degree and shall be punished by imprisonment for not more than 18 months or by a fine of not more than \$50,000, or both; and if a corporation by a fine of not more than \$100,000. Each day during which the violation continues constitutes an additional, separate and distinct offense.
25. Notice is further given that, pursuant to N.J.S.A. 48:13A-9, the Department shall revoke or suspend the Certificate of Public Convenience and Necessity issued to any person engaged in the solid waste collection or disposal business upon a finding that such person has violated any provision of the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., or the Solid Waste Collection Regulatory Reform Act, N.J.S.A. 48:13A-7.1 et seq., or any rule, regulation or Administrative Order adopted or issued pursuant thereto; or has violated any provision of any laws related to pollution of the air, water or lands of this State; or has refused or failed to comply with any lawful order of the Department; or has had its registration revoked by the Department; or has been denied approval of a license under the provisions of N.J.S.A. 13:1E-126 et seq., or has had its license revoked by the Department as the case may be.

DATE: 11.20.2013

  
\_\_\_\_\_  
John Giordano, Assistant Commissioner  
Compliance & Enforcement



**SOLID WASTE MANAGEMENT ACT**  
**MATRIX PENALTY ASSESSMENT WORK SHEET**

Respondents: T FIORE RECYCLING CORP, T FIORE DEMOLITION INC and THEODORE FIORE

Dates of Violation: 02/08/2012 and 4/24/2012

Rule violated (as listed in N.J.A.C. 7:26-5.4(g) or from the regulations: N.J.A.C. 7:26A-3.10(a)). Specifically, failure to comply with Permit Modification Requirements noted in Conditions # 10 & 11.

		<u>SERIOUSNESS</u>		
		<u>Major</u>	<u>Moderate</u>	<u>Minor</u>
<u>CONDUCT</u>	Major	\$40,000 - \$50,000	\$30,000 - \$40,000	\$15,000 - \$25,000
	Moderate	\$30,000 - \$40,000	\$10,000 - \$20,000	\$3,000 - \$6,000
	Minor	\$15,000 - \$25,000	\$3,000 - \$6,000	NA

- |    |                             |                                   |
|----|-----------------------------|-----------------------------------|
| 1. | Degree of Seriousness:      | <u>Minor</u>                      |
| 2. | Degree of Conduct:          | <u>Major</u>                      |
| 3. | Matrix Cell Range:          | \$ <u>15000</u> - \$ <u>25000</u> |
| 4. | Midpoint of Range:          | \$ <u>20,000</u>                  |
| 5. | Primary Penalty Assessment: | \$ <u>0.00</u>                    |
| 6. | Discretionary Adjustment:   | \$ <u>0.00</u>                    |
| 7. | Total Penalty Assessment:   | \$ <u>20,000</u>                  |

**Justification for Assessment**

**Seriousness:** N.J.A.C. 7:26A 3.5 et seq. requires that all persons issued a General Approval to operate a recycling center for Class B recyclable material comply with all conditions of the Approval. Compliance with the Approval ensures that those operational provisions, which undergo considerable engineering review in order to get approval, are actually implemented. Such implementation allows the considerable and substantial environmental, safety and operational protocols necessary to minimize potential negative impacts of the operation to be effective. The Department considers failure to comply with the approval condition pertaining to modification requirements for this violation as Minor.

**Conduct:** As the result of compliance evaluations conducted on 02/08/2012 and 04/24/2012 the Department has determined that Respondents have continuously failed to comply with the applicable requirements for any modification to the approved site plan and approval conditions. As such the Department considers this conduct as Major.

**Discretionary Adjustment:** None

**Comments:** No penalty was issued for the first violation as it fell within the Grace Period Rule. However, since this violation was repeated within a year, the penalty was assessed for the second violation as afforded by the Grace Period Rule.

**SOLID WASTE MANAGEMENT ACT**  
**MATRIX PENALTY ASSESSMENT WORK SHEET**

**Respondents: T FIORE RECYCLING CORP, T FIORE DEMOLITION INC and THEODORE FIORE**

**Dates of Violation: 02/09/2011, 03/09/2011, 04/29/2011, 06/27/2011, 07/27/2011, 09/15/2011, 03/25/2013 and 08/19/2013.**

**Rule violated (as listed in N.J.A.C. 7:26-5.4(g) or from the regulations): N.J.A.C. 7:26A-3.5(e). Specifically, facility continued to receive recyclable materials beyond its permitted limits.**

		<u>SERIOUSNESS</u>		
		<u>Major</u>	<u>Moderate</u>	<u>Minor</u>
<u>CONDUCT</u>	Major	\$40,000 - \$50,000	\$30,000 - \$40,000	\$15,000 - \$25,000
	Moderate	\$30,000 - \$40,000	\$10,000 - \$20,000	\$3,000 - \$6,000
	Minor	\$15,000 - \$25,000	\$3,000 - \$6,000	NA

- |                                |                                   |
|--------------------------------|-----------------------------------|
| 1. Degree of Seriousness:      | <u>Major</u>                      |
| 2. Degree of Conduct:          | <u>Major</u>                      |
| 3. Matrix Cell Range:          | \$ <u>40000</u> - \$ <u>50000</u> |
| 4. Midpoint of Range:          | \$ <u>45,000</u>                  |
| 5. Primary Penalty Assessment: | \$ <u>45,000</u>                  |
| 6. Discretionary Adjustment:   | \$ <u>350,000</u>                 |
| 7. Total Penalty Assessment:   | \$ <u>395,000</u>                 |

**Justification for Assessment**

**Seriousness:** The Respondents' repeated failure to cease the unapproved activity of receiving additional unprocessed material despite having exceeded the permitted volume has resulted in a volume that is more than five times the permitted volume for this facility. This size and volume of Pile #1 can potentially be hazardous to life and property in the event of a slope failure. As such the Department considers the seriousness to be Major.

**Conduct:** The Respondents' repeated their failure to cease the unapproved activity of receiving additional unprocessed material despite having exceeded the permitted volume and receiving numerous Notices of Violation addressing this issue. As such, the Department considers Respondents' conduct for repeated disregard of this approval condition as Major.

**Discretionary Adjustment:** The penalty for repeated violations (2<sup>nd</sup> through 8<sup>th</sup>) was calculated using the maximum penalty range of \$50,000 multiplied by the 7 repeated violation dates for a sum of \$350,000.

**SOLID WASTE MANAGEMENT ACT**  
**MATRIX PENALTY ASSESSMENT WORK SHEET**

**Respondents: T FIORE RECYCLING CORP, T FIORE DEMOLITION INC and THEODORE FIORE**

**Dates of Violation: 02/09/2011, 03/09/2011, 04/29/2011, 06/27/2011, 07/27/2011, 09/15/2011, 03/25/2013 and 08/19/2013.**

**Rule violated (as listed in N.J.A.C. 7:26-5.4(g) or from the regulations): N.J.A.C. 7:26A-3.5(e). Specifically, Respondents did not distribute the location of unprocessed recyclable materials to Piles # 1 and # 3 per the Site Plan approved in the Permit.**

<b><u>SERIOUSNESS</u></b>				
		<b><u>Major</u></b>	<b><u>Moderate</u></b>	<b><u>Minor</u></b>
<b><u>CONDUCT</u></b>	<b>Major</b>	\$40,000 - \$50,000	\$30,000 - \$40,000	\$15,000 - \$25,000
	<b>Moderate</b>	\$30,000 - \$40,000	\$10,000 - \$20,000	\$3,000 - \$6,000
	<b>Minor</b>	\$15,000 - \$25,000	\$3,000 - \$6,000	NA

- |                                |                       |
|--------------------------------|-----------------------|
| 1. Degree of Seriousness:      | <u>Minor</u>          |
| 2. Degree of Conduct:          | <u>Major</u>          |
| 3. Matrix Cell Range:          | \$ 40,000 - \$ 50,000 |
| 4. Midpoint of Range:          | <u>\$ 45,000</u>      |
| 5. Primary Penalty Assessment: | <u>\$ 45,000</u>      |
| 6. Discretionary Adjustment:   | <u>\$ 350,000</u>     |
| 7. Total Penalty Assessment:   | <u>\$ 395,000</u>     |

**Justification for Assessment**

**Seriousness:** The Respondents' Permit was designed to address all necessary engineering controls that consider potential environmental impact, safety and accessibility. The Department evaluated such considerations when approval to store recyclable materials into areas designated as Pile #1 and Pile # 3 were made. Consolidating these piles and then exceeding the capacity of same was performed without affording the Department any review of this action. The exceedance of Pile #1 beyond the approved capacity for both Piles # 3 and Pile # 1 combined has presented safety and potential environmental concerns. As such the Department considers the seriousness to be Major.

**Conduct:** The Respondents' failure to seek approval to change the Site Plan and repeatedly exceed the permitted volume has resulted in a pile that is more than twice as high as permitted and a volume that is more than five times the permitted volume for this facility. As such the Department considers Respondents' conduct for repeated disregard of this approval condition as Major.

**Discretionary Adjustment:** The penalty for repeated violations (2<sup>nd</sup> through 8<sup>th</sup>) was calculated using the maximum penalty range of \$50,000 multiplied by the 7 repeated violation dates for a sum of \$350,000.

**SOLID WASTE MANAGEMENT ACT**  
**MATRIX PENALTY ASSESSMENT WORK SHEET**

**Respondents: T FIORE RECYCLING CORP, T FIORE DEMOLITION INC and THEODORE FIORE**

**Dates of Violation: 02/08/2012, 07/18/2012, 03/25/2013 and 08/19/2013.**

**Rule violated (as listed in N.J.A.C. 7:26-5.4(g) or from the regulations): N.J.A.C. 7:26A-3.1(a). Specifically, failure to fulfill financial obligations as required by the permit.**

		<b><u>SERIOUSNESS</u></b>		
		<b><u>Major</u></b>	<b><u>Moderate</u></b>	<b><u>Minor</u></b>
<b><u>CONDUCT</u></b>	<b>Major</b>	\$40,000 - \$50,000	\$30,000 - \$40,000	\$15,000 - \$25,000
	<b>Moderate</b>	\$30,000 - \$40,000	\$10,000 - \$20,000	\$3,000 - \$6,000
	<b>Minor</b>	\$15,000 - \$25,000	\$3,000 - \$6,000	NA

- |                                |                                 |
|--------------------------------|---------------------------------|
| 1. Degree of Seriousness:      | <u>Minor</u>                    |
| 2. Degree of Conduct:          | <u>Moderate</u>                 |
| 3. Matrix Cell Range:          | \$ <u>3000</u> - \$ <u>6000</u> |
| 4. Primary Penalty Assessment: | \$ <u>0.0</u>                   |
| 5. Discretionary Adjustment:   | \$ <u>16,500</u>                |
| 6. Total Penalty Assessment:   | \$ <u>16,500</u>                |

**Justification for Assessment**

**Seriousness:** The seriousness of Respondents' repeated failure to fulfill their financial obligations to the Department is considered to be Minor.

**Conduct:** The conduct of Respondents for repeatedly failing to fulfill their financial obligations to the Department is considered to be Moderate.

**Discretionary Adjustment:** No penalty was assessed for first violation date due to the Grace Period Law. Repeated violation of this requirement within a year allow penalties to be assessed. The penalties for subsequent violation dates were the mid-range of \$4,500 for the violation of 7/8/12, and the high range amount of \$6000 for 3/25/13 and 8/19/13 for a total adjustment of \$16,500.

**SOLID WASTE MANAGEMENT ACT  
MATRIX PENALTY ASSESSMENT WORK SHEET**

**Respondents: T FIORE RECYCLING CORP, T FIORE DEMOLITION INC and THEODORE FIORE**

**Dates of Violation:** 02/09/2011, 03/09/2011, 04/29/2011, 06/27/2011, 07/27/2011, 09/15/2011, 03/02/2012, 04/24/2012, 07/18/2012, 03/25/2013 and 08/19/2013.

**Rule violated (as listed in N.J.A.C. 7:26-5.4(g) or from the regulations): N.J.A.C. 7:26A-3.9(b). Specifically, recyclable materials were not processed and distributed off-site or otherwise removed from the site within the one year requirement.**

<u>SERIOUSNESS</u>				
		<u>Major</u>	<u>Moderate</u>	<u>Minor</u>
<u>CONDUCT</u>	<b>Major</b>	\$40,000 - \$50,000	\$30,000 - \$40,000	\$15,000 - \$25,000
	<b>Moderate</b>	\$30,000 - \$40,000	\$10,000 - \$20,000	\$3,000 - \$6,000
	<b>Minor</b>	\$15,000 - \$25,000	\$3,000 - \$6,000	NA

- |    |                                    |                                     |
|----|------------------------------------|-------------------------------------|
| 1. | <b>Degree of Seriousness:</b>      | <u>Major</u>                        |
| 2. | <b>Degree of Conduct:</b>          | <u>Major</u>                        |
| 3. | <b>Matrix Cell Range:</b>          | \$ <u>40,000</u> - \$ <u>50,000</u> |
| 4. | <b>Midpoint of Range:</b>          | \$ <u>45,000</u>                    |
| 5. | <b>Primary Penalty Assessment:</b> | \$ <u>45,000</u>                    |
| 6. | <b>Discretionary Adjustment:</b>   | \$ <u>500,000.</u>                  |
| 7. | <b>Total Penalty Assessment:</b>   | \$ <u>545,000.</u>                  |

**Justification for Assessment**

**Seriousness:** The Respondents' failure to find end markets or otherwise dispose of the unprocessed recyclable material resulted in the unsafe accumulation of same. The Department has witnessed slope slides and has been advised by Mr. Fiore's consultant that the heavy earth moving equipment stranded in the middle of the slope on Pile #1 will require a crane to be removed as it is unsafe to operate in its current predicament. As such the Department considers the seriousness to be Major.

**Conduct:** The Respondents' repeated exceedance of the permitted volume has resulted in a pile that is more than twice as high as permitted and a volume that is more than five times the permitted volume for this facility. As such the Department considers Respondents' conduct for repeated disregard of this approval condition as Major.

**Discretionary Adjustment:** After the mid-range penalty of \$45,000 was assessed for the first violation, the high range penalty of \$50,000 for each of the subsequent 10 repeated violations dates were assessed for a discretionary adjustment of \$500,000.

**SOLID WASTE MANAGEMENT ACT**  
**MATRIX PENALTY ASSESSMENT WORK SHEET**

**Respondents: T FIORE RECYCLING CORP, T FIORE DEMOLITION INC and THEODORE FIORE**

**Date of Violation: 08/19/2013**

**Rule violated (as listed in N.J.A.C. 7:26-5.4(g) or from the regulations): N.J.A.C. 7:26A-3.5(e). Specifically, failure to take necessary steps to ensure that no mosquito colony formation occurred due to the presence of a significant accumulation of uncovered tires.**

<b><u>SERIOUSNESS</u></b>				
		<b><u>Major</u></b>	<b><u>Moderate</u></b>	<b><u>Minor</u></b>
<b><u>CONDUCT</u></b>	<b>Major</b>	\$40,000 - \$50,000	\$30,000 - \$40,000	\$15,000 - \$25,000
	<b>Moderate</b>	\$30,000 - \$40,000	\$10,000 - \$20,000	\$3,000 - \$6,000
	<b>Minor</b>	\$15,000 - \$25,000	\$3,000 - \$6,000	NA

- |    |                                    |                                 |
|----|------------------------------------|---------------------------------|
| 1. | <b>Degree of Seriousness:</b>      | <u>Minor</u>                    |
| 2. | <b>Degree of Conduct:</b>          | <u>Moderate</u>                 |
| 3. | <b>Matrix Cell Range:</b>          | \$ <u>3000</u> - \$ <u>6000</u> |
| 4. | <b>Midpoint of Range:</b>          | \$ <u>4500</u>                  |
| 5. | <b>Primary Penalty Assessment:</b> | \$ <u>4500</u>                  |
| 6. | <b>Discretionary Adjustment:</b>   | \$ <u>0.00</u>                  |
| 7. | <b>Total Penalty Assessment:</b>   | \$ <u>4,500.</u>                |

**Justification for Assessment**

**Seriousness:** This was the first violation date for this requirement and its seriousness is considered Minor.

**Conduct:** The Respondents' conduct is considered Moderate since such Best Management Practices are common standards that should have been implemented.

**Discretionary Adjustment:** No discretionary adjustment was made for this violation.

### ECONOMIC BENEFIT PENALTY ASSESSMENT

The Department has ascertained that RESPONDENTS typically charge a tipping fee of \$175.00 per 20 cubic yard (C.Y.) truck load of unprocessed recyclable material. On August 19, 2013, the Department used a measuring wheel to measure the base of Pile #1 to be 456 feet by 412 feet. The height of this pile was compared to the 30 foot vertical marker used to ensure compliance with the height restriction for this site. Such observation revealed that the pile was at least 45 feet higher than the vertical marker for a total height of 75 feet. Using the formula for the volume of a pyramid, that is  $\frac{1}{3}$  height x area of the base, the Department calculated a volume of 173,955 CY. Subtracting the volume of 30,314 CY, the capacity for this pile which the facility received its permit, yields an over capacity volume of 143,641 CY. Dividing this over-capacity volume by 20 CYs (representing typical truck capacity) yields 7,182 loads at \$175 per load for a total economic benefit of **\$1,256,858** as of August 19, 2013. The Department visited the site on October 30, 2013 and observed that unprocessed materials were being added to Pile # 1 which had substantially increased in volume.

**Administrative Hearing Request Checklist and Tracking Form**

I. Document Being Appealed: EA ID # PEA130004 - 132148

		<u>Date Document Issued</u>
II. Person Requesting Hearing:		
_____		
Name/Company	_____	Name of Attorney (if applicable)
_____		_____
_____		
Address	_____	Address
_____		_____
Telephone #	_____	Telephone #
		_____

III. Please Include the Following Information As Part of Your Request:

- A. The date the alleged violator received the Enforcement Document;
- B. A copy of the Enforcement Document and a list of all issues being appealed;
- C. An admission or denial of each of the findings of fact, or a statement of insufficient knowledge;
- D. The defenses to each of the findings of fact in the enforcement document;
- E. Information supporting the request;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all of the information listed above, including attachment, to:

- 1. New Jersey Department of Environmental Protection  
Office of Legal Affairs  
401 E. State Street, P.O. Box 402  
Trenton, New Jersey 08625  
ATTN: Adjudicatory Hearing Requests
- 2. Department of Environmental Protection  
Bureau of Solid Waste Compliance and Enforcement  
9 Ewing Street, Mail Code 09-01  
P.O. Box 420  
Trenton NJ 08625-0420  
ATTN: Tom Farrell, Chief
- 3. All co-permittees (w/attachments)

IV. Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Job No: 35660000 Billing Code: \_\_\_\_\_ Case Manager: \_\_\_\_\_





SOLID WASTE COMPLIANCE AND ENFORCEMENT

Program Interest
T FIORE RECYCLING CORP 411 WILSON AVE. Newark, NJ. 07103 132148

Type of Notice
CORRECTED(NON-INITIAL)

Amount Due
\$ 2,632,858.00

Billing Date
11/19/13

Due Date
12/19/13

NJEMS Bill ID
000000120509300

Summary	
Total Amount Assessed	2,632,858.00
Amount Received Before Creating Installment Plan (if installment plans is allowed)	0.00
Amount Transferred To Installment Plan	0.00
Installment Amount	0.00
Total Amount Credited	0.00
Total Amount Debited (Other Than Amounts Assessed)	0.00
<b>Total Amount Due</b>	<b>2,632,858.00</b>

REMINDER:  
PLEASE PAY THE BILL BY THE DUE DATE LISTED ABOVE - OTHERWISE SECOND & THIRD NOTICES WILL BE ISSUED  
PLEASE MAKE CHECKS PAYABLE TO "TREASURER-STATE OF NEW JERSEY" & WRITE PROGRAM INTEREST ID ON CHECK  
RETURN BOTTOM STUB WITH PAYMENT AND SEND TO NJ DEPARTMENT OF TREASURY  
SEE BACK OF INVOICE FOR CONTACT NAMES AND TELEPHONE NUMBERS  
IF THIS IS A SECOND OR THIRD NOTICE THE INVOICE NUMBER WILL BE DIFFERENT THAN THE ORIGINAL NOTICE  
PAST DUE THIRD NOTICE BILLS ARE REFERRED TO A COLLECTION AGENCY IF NOT PAID

See Back Of Page for Billing Inquiries

INVOICE NO. 131876400

D9901F (R 3/14/02)



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION SOLID WASTE

INVOICE NO. 131876400

COMPLIANCE AND ENFORCEMENT

Program Interest ID
132148

Type of Notice
CORRECTED(NON-INITIAL)

Billing Date
11/19/13

Due Date
12/19/13

NJEMS Bill ID
000000120509300

Amount Due
\$ 2,632,858.00

For name and/or address change, check box and write corrections on the back of this invoice.

DO NOT FOLD, BEND OR MARK

Enter the Amount of your payment → \$

RETURN THIS PORTION

with your check made payable to:

TREASURER - STATE OF NEW JERSEY and mail to:

NJ DEPARTMENT OF TREASURY  
DIVISION OF REVENUE  
PO BOX 417  
TRENTON, NJ 08646-0417



T FIORE RECYCLING CORP

411 WILSON AVE  
Newark

NJ 07105-4210

EP10101010101010100103020104081111112632858000000201318764007H3E

H3



**SOLID WASTE  
COMPLIANCE AND ENFORCEMENT**

Program Interest
T FIORE RECYCLING CORP 411 WILSON AVE. Newark, NJ. 07103 132148

Type of Notice
CORRECTED(NON-INITIAL)

Amount Due
\$ 2,632,858.00

Billing Date
11/19/13

Due Date
12/19/13

NJEMS Bill ID
000000120509300

AONOCAPA  
Prescribed Enforcement Action  
Billed amount revised to match Enforcement Action PEA130004

**ASSESSMENTS**

Start-End Date: 11/19/2013-11/19/2013    Activity: PEA130004    Status: Open (Pending Payment)    Amount: \$ 2632858.00  
 Assessment Type: PENALTY  
 Regulatory Basis:

Total Amount Assessed: \$ 2,632,858.00