

11-18-1998

MRO



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

11.16.98

100903825

To the Honorable Commissioner of Patents and Trademarks. Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Waste Water Recovery, Inc.

- Individual(s)
- General Partnership
- Corporation - State of TX
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: November 6, 1998

2. Name and address of receiving party(ies):

Name: Fidelity Funding, Inc.

Internal Address: _____

Street Address: 12770 Merit Drive, 6th Floor

City: Dallas State: TX ZIP: 75251

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State TX
- Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached:

- Yes
 - No
- (Designation must be a separate document from Assignment)

Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark registration No.(s)

1,566,412
1,244,757

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: J. Kevin Gray
Jenkins & Gilchrist, P.C.

Internal Address: _____

Street Address: 1445 Ross Avenue, Ste. 3200

City: Dallas State: Texas Zip: 75202-2799

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41): \$ 65.00

- Enclosed
- Authorized to be charged to deposit account.

(If check is not received with this correspondence or additional fees are required, please charge to deposit account 10-0447.)

8. Deposit Account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

1/18/1998 DNGUYEN 00000017 1566412

FC:481 40.00 OP
FF:182 25.00 OP

Name of Person Signing

Signature

Date

11/13/98

Total number of pages comprising cover sheet:

1

TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement (this "Agreement") is entered into as of November 6, 1998, by and between Waste Recovery, Inc., a Texas corporation ("Company"), and Fidelity Funding, Inc., a Texas corporation ("Fidelity"). Company hereby agrees with Fidelity as follows:

1. Defined Terms. Terms used but not otherwise defined herein shall have the meanings assigned thereto in that Loan and Security Agreement (the "Loan Agreement"), of even date herewith, between Company and Fidelity.

2. Grant of Security Interest. To secure the obligations of Company under the Loan Agreement, Company hereby grants to Fidelity a first priority security interest in, and conditionally assigns, but does not transfer title to Fidelity, all of Company's right, title and interest in and to the following assets and properties (collectively, the "Collateral"):

(a) all trademarks, rights and interests predictable as trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and any other designs or sources of business identifies, indicia of origin or similar devices, including without limitation, those listed on Schedule 1 attached hereto, all registrations with respect thereto, all applications with respect to the foregoing, and all extensions and renewals with respect to any of the foregoing, together with all of the goodwill associated therewith, in each case whether now or hereafter existing, and all rights and interest associated with the foregoing including any licenses, license rights and royalties of all rights to sue or by opposition or cancellation proceedings for past, present and future infringements of such rights; and

(b) all proceeds of the foregoing.

3. Warranties and Representations. Company hereby warrants and represents to Fidelity the following:

(a) A true and complete schedule setting forth all federal and state trademark registrations owned or controlled by Company or licensed to Company is set forth on Schedule 1;

(b) Each of the trademarks and trademark registrations are valid and enforceable, and Company is not presently aware of any past, present, or prospective claim by any third party that any of the trademarks are invalid or unenforceable, or that the use of any trademarks violates the rights of any third person, or of any basis for any such claims;

(c) Except as disclosed in the Loan Agreement, Company is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to each of the trademarks and trademark registrations, free and clear of any liens, charges and encumbrances, including without limitation, pledges, assignments, licenses, shop rights and covenants by Company not to sue third persons;

(d) Company has used and will continue to use proper statutory notice in connection with its use of each of the trademarks; and

(e) Company has used, and will continue to use, consistent standards of high quality (which may be consistent with Company's past practices) in the manufacture, sale, and delivery of products and services sold or delivered under or in connection with the trademarks, including, to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to maintain the validity of the trademarks.

4. After Acquired Trademark Rights. If Company shall obtain rights to any new trademarks, the provisions of this agreement shall automatically apply thereto. Company shall give prompt notice in writing to the Fidelity with respect to any such new trademarks or renewal or extension of any trademark registration. Company shall bear any expenses incurred in connection with future applications for trademark registration.

5. Litigation and Proceedings. Company shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and its own expense, such suits, administrative proceedings, or other actions for infringement or other damages as are in its reasonable business judgment necessary to protect the Collateral. Company shall provide to Fidelity any information with respect thereto reasonably requested by Fidelity. The Fidelity shall provide at Company's expense all necessary cooperation in connection with any such suit, proceeding or action including, without limitation, joining as a necessary party. Following Company's becoming aware thereof, Company shall notify Fidelity of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any United States, state or foreign court regarding Company's claim of ownership in any of the trademarks, its right to apply for the same, or its right to keep and maintain such trademark rights.

6. Events of Default. An Event of Default hereunder shall be deemed to have occurred and be continuing if (a) Company shall have breached any of the provisions of this Agreement or (b) an "Event of Default" shall have occurred under the Loan Agreement.

7. Specific Remedies. Upon the occurrence of any Event of Default:

(a) Fidelity may notify licensees to make royalty payments on any license or other similar agreements relating to the Collateral directly to the Fidelity.

(b) Fidelity may sell or reassign the Collateral and associated goodwill at public or private sale for such amounts, and at such time or times as Fidelity deems advisable. Any requirements of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is sent to Company five days prior to such disposition. Company shall be credited with the net proceeds of such sale only when they are actually received by Fidelity, and Company shall continue to be liable for any deficiency remaining after the Collateral is sold or collected.

(c) If the sale is to be a public sale, Fidelity shall also give notice of the time and place by publishing a notice one time at least five calendar days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held.

(d) To the maximum extent permitted by applicable law, Fidelity may be the purchaser of any or all of the Collateral and associated goodwill at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any public sale, to use and apply all or any part of the obligations owned by Company to Fidelity as a credit on account of the purchase price of any Collateral payable by Fidelity at such sale.

(e) Fidelity may exercise any and all other rights and remedies available to it as a lender under applicable law or the Uniform Commercial Code regardless of whether any part of the Collateral is subject to the Uniform Commercial Code, and may exercise any rights and remedies available to it under the Loan Agreement as the result of such Event of Default as if the Collateral hereunder were Collateral under the Loan Agreement.

8. Assignment. All grants, covenants and agreements contained in this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that Company may not delegate or assign any of its duties or obligations under this Agreement without the prior written consent of Fidelity. **FIDELITY RESERVES THE RIGHT TO ASSIGN ITS RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT IN WHOLE OR IN PART TO ANY PERSON OR ENTITY.** Without limiting the generality of the foregoing, Fidelity may from time to time grant participations in all or any part of the obligations of Company hereunder or the Guaranty to any Person on such terms and conditions as may be determined by Fidelity in its sole and absolute discretion, provided that the grant of such participation shall not relieve Fidelity of its obligations hereunder nor create any additional obligation of Company.

9. GOVERNING LAW. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW. COMPANY HEREBY IRREVOCABLY SUBMITS ITSELF TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN DALLAS COUNTY, TEXAS, AND AGREES AND CONSENTS THAT SERVICE OF PROCESS MAY BE MADE UPON IT IN ANY LEGAL PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER RELATIONSHIP BETWEEN FIDELITY AND COMPANY BY ANY MEANS ALLOWED UNDER STATE OR FEDERAL LAW. ANY LEGAL PROCEEDING ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR ANY OTHER RELATIONSHIP BETWEEN FIDELITY AND COMPANY SHALL BE BROUGHT AND LITIGATED EXCLUSIVELY IN ANY ONE OF THE STATE OR FEDERAL COURTS LOCATED IN DALLAS COUNTY, TEXAS HAVING JURISDICTION. THE PARTIES HERETO HEREBY WAIVE AND AGREE NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE, THAT ANY SUCH PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR THAT THE VENUE THEREOF IS IMPROPER.**

10. WAIVERS. EACH OF COMPANY AND FIDELITY HEREBY (A) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY AT ANY TIME ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR ASSOCIATED HERewith; (B) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES; (C) CERTIFIES THAT NO PARTY HERETO NOR ANY REPRESENTATIVE OR AGENT OR COUNSEL FOR ANY PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (D) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY BASED UPON, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS PARAGRAPH.

11. Notices. All notices, requests, consents, demands and other communications required or permitted under this Agreement shall be in writing and, unless otherwise specifically provided in this Agreement, shall be deemed sufficiently given or furnished if delivered in the manner required by the Loan Agreement.

IN WITNESS WHEREOF, the Company and the Fidelity have executed this Agreement by their duly authorized officers as of the date first above written.

WASTE RECOVERY, INC.

By: 

Name: Lando Conross

Title: Authorized Representative

FIDELITY FUNDING, INC.

By: 

Michael D. Haddad

President

SCHEDULE 1

	<u>Registration No.</u>	<u>Title/Description</u>	<u>Registration Date</u>
1)	1,566,412	Service Mark Principal Register	November 14, 1979
2)	1,244,757	Service Mark "Making Waste A Resource"	July 5, 1983