

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0186-MSW-E **TCEQ ID:** RN105153738 **CASE NO.:** 32427

RESPONDENT NAME: Southwest Tire Disposal, LLC

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Southwest Tire Disposal, 1005 West Murphy, Odessa, Ector County</p> <p>TYPE OF OPERATION: Unauthorized scrap tire storage facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on December 11, 2006 alleging unauthorized storage of scrap tires. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 16, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Clinton Sims, Enforcement Division, Enforcement Team 7, MC 128; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 Respondent: Mr. Robert S. Hough, President, Southwest Tire Disposal, LLC, 808 Camino De Paz Court, El Paso, Texas 79922 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: December 11, 2006</p> <p>Date of Investigation Relating to this Case: December 14, 2006</p> <p>Date of NOE Relating to this Case: January 9, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation. One violation was documented.</p> <p>WASTE</p> <p>Failure to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in containers. Specifically, approximately 20,000 scrap tires were observed being stored in several structures (including a 50' x 150' metal building) and in sixteen tractor trailers parked on-site [30 TEX. ADMIN. CODE § 328.60(a)].</p>	<p>Total Assessed: \$2,500</p> <p>Total Deferred: \$500 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,000</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease accepting scrap tires at the Facility until the required TCEQ registration is obtained;</p> <p>b. Within 60 days after the effective date of this Agreed Order, obtain a scrap tire storage site registration for the Facility from the TCEQ or remove all tires in excess of 500 to an authorized facility; and</p> <p>c. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	22-Jan-2007	Screening	24-Jan-2007	EPA Due	
	PCW	26-Jan-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Southwest Tire Disposal, LLC
Reg. Ent. Ref. No.	RN105153738
Facility/Site Region	7-Midland
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	32427	No. of Violations	1
Docket No.	2007-0186-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Clinton Sims
Multi-Media		EC's Team	Enforcement Team 8
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes The Respondent has not received any previous NOV's or Orders at this site in the past five years.

Culpability Enhancement **Subtotal 4**

Notes Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Reduction **Subtotal 5**

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts **0% Enhancement*** **Subtotal 6**
Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 24-Jan-2007

Docket No. 2007-0186-MSW-E

PCW

Respondent Southwest Tire Disposal, LLC

Policy Revision 2 (September 2002)

Case ID No. 32427

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105153738

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent has not received any previous NOVs or Orders at this site in the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 24-Jan-2007

Docket No. 2007-0186-MSW-E

PCW

Respondent Southwest Tire Disposal, LLC

Policy Revision 2 (September 2002)

Case ID No. 32427

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105153738

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 328.60(a)

Violation Description Failed to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in containers, as documented during an investigation conducted on December 14, 2006. Specifically, approximately 20,000 scrap tires were observed being stored in several structures (including a 50' x 150' metal building) and in sixteen tractor trailers parked on-site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			25%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 40

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on the December 14, 2006 investigation date to the January 24, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$36

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent Southwest Tire Disposal, LLC
Case ID No. 32427
Reg. Ent. Reference No. RN105153738
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$1,000	14-Dec-2006	3-Sep-2007	0.7	\$36	n/a	\$36
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to register the Facility from the investigation date to the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$36

Compliance History

Customer/Respondent/Owner-Operator: CN601582620 SOUTHWEST TIRE DISPOSAL, LLC Classification: AVERAGE Rating: 3.01
BY DEFAULT
Regulated Entity: RN105153738 SOUTHWEST TIRE DISPOSAL Classification: Site Rating:

ID Number(s):
Location: 1005 W MURPHY, ODESSA, TX, 79761

TCEQ Region: REGION 07 - MIDLAND

Date Compliance History Prepared: February 02, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 02, 2002 to February 02, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Clinton Sims Phone: 512-239-6933

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SOUTHWEST TIRE DISPOSAL, LLC
RN105153738

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0186-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Southwest Tire Disposal, LLC ("Southwest Tire") under the authority TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Southwest Tire appear before the Commission and together stipulate that:

1. Southwest Tire owns and operates an unauthorized scrap tire storage facility at 1005 West Murphy in Odessa, Ector County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and Southwest Tire agree that the Commission has jurisdiction to enter this Agreed Order, and that Southwest Tire is subject to the Commission's jurisdiction.
4. Southwest Tire received notice of the violations alleged in Section II ("Allegations") on or about January 14, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Southwest Tire of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Southwest Tire has paid Two Thousand Dollars (\$2,000) of the administrative penalty and Five

Hundred Dollars (\$500) is deferred contingent upon Southwest Tire's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Southwest Tire fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Southwest Tire to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Southwest Tire have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Southwest Tire has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, Southwest Tire is alleged to have failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in containers, in violation of 30 TEX. ADMIN. CODE § 328.60(a), as documented during an investigation conducted on December 14, 2006. Specifically, approximately 20,000 scrap tires were observed being stored in several structures (including a 50' x 150' metal building) and in sixteen tractor trailers parked on-site.

III. DENIALS

Southwest Tire generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Southwest Tire pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Southwest Tire's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Southwest Tire Disposal, LLC, Docket No. 2007-0186-MSW-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that Southwest Tire shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease accepting scrap tires at the Facility until the required TCEQ registration is obtained, in accordance with 30 TEX. ADMIN. CODE § 328.60(a);
 - b. Within 60 days after the effective date of this Agreed Order, obtain a scrap tire storage site registration for the Facility from the TCEQ or remove all tires in excess of 500 to an authorized facility, in accordance with 30 TEX. ADMIN. CODE § 328.60(a); and
 - c. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
Midland Regional Office
Texas Commission on Environmental Quality
3300 North A Street, Building 4, Suite 107
Midland, Texas 79705-5404

3. The provisions of this Agreed Order shall apply to and be binding upon Southwest Tire. Southwest Tire is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Southwest Tire fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Southwest Tire's failure to comply is not a violation of this Agreed Order. Southwest Tire shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Southwest Tire shall notify the Executive Director within seven days after Southwest Tire becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Southwest Tire shall be made in writing to the Executive Director. Extensions are not effective until Southwest Tire receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Southwest Tire in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Southwest Tire, or three days after the date on which the Commission mails notice of the Order to Southwest Tire, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Solier

For the Executive Director

8/16/2007

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Robert S. Hough

Signature

8/18/07

Date

Robert S. Hough

Name (Printed or typed)
Authorized Representative of
Southwest Tire Disposal, LLC

President

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

