

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2005-0464-MSW-E TCEQ ID: RN104293857 CASE NO.: 24883**  
**RESPONDENT NAME: ALTHER TYSON DBA AFP TIRES**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATIONS OCCURRED:</b> 3475 College Street, Beaumont, Jefferson County</p> <p><b>TYPE OF OPERATION:</b> Tire shop and scrap tire storage facility</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on June 11, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  <b>TCEQ Enforcement Coordinator:</b> Mr. Bryan Elliott, Enforcement Division, MC 149, (512) 239-6162  <b>TCEQ Regional Contact:</b> Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838  <b>Respondent:</b> Ms. Alther Tyson, Owner, AFP Tires, 2501 Washington Boulevard, Beaumont, Texas 77705  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b>                      None</p> <p><b>Date of Investigations Relating to this Case:</b>                      May 24, 2004, and December 9, 2004</p> <p><b>Date of NOV/NOE Relating to this Case:</b>                      July 22, 2004 (NOV), and February 4, 2005 (NOE)</p> <p><b>Background Facts:</b></p> <p>A petition was filed on November 14, 2005. The Respondent did not file an answer. The certified mail receipt card was received on January 10, 2006. Therefore, the Executive Director is seeking a Default Order.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalties Database Report.</p> <p><b>MSW:</b></p> <p>1. Failed to obtain registration as a scrap tire generator and storage site while storing in excess of 500 used or scrap tires [30 TEX. ADMIN. CODE §§ 328.56(a)(1), 328.56(d)(2) and 328.60(a)].</p> <p>2. Failed to monitor vectors and utilize vector control measures at least once every two weeks for the storage of over 500 tires outside [30 TEX. ADMIN. CODE § 328.56(d)(4)].</p>	<p><b>Total Assessed:</b> \$6,300</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Due to General Revenue:</b> \$6,300</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Technical Requirements</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 60 days, reduce the quantity of scrap tires the Facility to less than 500 or obtain a scrap tire registration.</li> <li>2. Within 75 days, submit written certification and include detailed supporting documentation including photographs receipts, and/or other records to demonstrate compliance with Ordering Provision No. 1.</li> </ol>



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision March 02, 2005

<b>DATES</b>	Assigned PCW	08-Feb-2005 19-Jul-2005	Screening	08-Mar-2005	Priority Due	09-Apr-2005	EPA Due	
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<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Alther Tyson dba AFP Tires
Reg. Ent. Ref. No.	RN104293857
Additional ID No(s).	Tire Registration 455100041
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor Source

<b>CASE INFORMATION</b>			
Enf./Case ID No.	24883	No. of Violations	2
Docket No.	2005-0464-MSW-E	Order Type	1660
Case Priority	3	Enf. Coordinator	J. Mac Vilas
Media Program(s)	Waste Tires	EC's Team	Enforcement Team 5
Multi-Media			
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** 5% Enhancement Subtotals 2, 3, & 7

Notes

**Culpability** No  0% Enhancement Subtotal 4

Notes

**Good Faith Effort to Comply** 0% Reduction Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes

**Economic Benefit** 0% Enhancement\* Subtotal 6

Total EB Amounts	\$717		<small>*Capped at the Total EB \$ Amount</small>
Approx. Cost of Compliance	\$3,500		

**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

**PAYABLE PENALTY**

**Screening Date** 08-Mar-2005

**Docket No.** 2005-0464-MSW-E

**PCW**

**Respondent** Alther Tyson dba AFP Tires

*Policy Revision 2 (September 2002)*

**Case ID No.** 24883

*PCW Revision March 02, 2005*

**Reg. Ent. Reference No.** RN104293857

**Additional ID No(s).** Tire Registration 455100041

**Media [Statute]** Waste Tires

**Enf. Coordinator** J. Mac Vilas

**Site Address**

**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 <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 <i>(number of judgements or consent decrees meeting criteria)</i>	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 <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	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 <i>(number of audits for which notices were disclosed)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	n	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	n	0%
	Participation in a voluntary pollution reduction program	n	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	0	0%

**Adjustment Percentage (Subtotal 2)**

>> **Repeat Violator (Subtotal 3)**

**Adjustment Percentage (Subtotal 3)**

>> **Compliance History Person Classification (Subtotal 7)**

**Adjustment Percentage (Subtotal 7)**

>> **Compliance History Summary**

**Compliance History Notes**

**Total Adjustment Percentage (Subtotals 2, 3, & 7)**

Screening Date 08-Mar-2005

Docket No. 2005-0464-MSW-E

PCW

Respondent Alther Tyson dba AFP Tires

Policy Revision 2 (September 2002)

Case ID No. 24883

PCW Revision March 02, 2005

Reg. Ent. Reference No. RN104293857

Additional ID No(s). Tire Registration 455100041

Media [Statute] Waste Tires

Enf. Coordinator J. Mac Vilas

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

### Economic Benefit Worksheet

Respondent Alther Tyson dba AFP Tires  
 Case ID No. 24883  
 Reg. Ent. Reference No. RN104293857  
 Additional ID No(s). Tire Registration 455100041  
 Media [Statute] Waste Tires  
 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
<b>Delayed Costs</b>							
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	\$3,000	09-Dec-2004	31-Dec-2005	1.1	\$159	n/a	\$159
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated costs to remove and dispose of the tires at the site. Respondent purchased the property in 2004 and was credited \$10,000 from the purchase price for environmental cleanup as documented in a Warranty Deed with Vendor's Lien. Respondent has indicated that they are attempting to complete removal of the tires. Date required is the inspection date and final date is the estimated date of compliance.

Item	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 **\$3,000**

**TOTAL \$159**

**Screening Date** 08-Mar-2005

**Docket No.** 2005-0464-MSW-E

**PCW**

**Respondent** Alther Tyson dba AFP Tires

*Policy Revision 2 (September 2002)*

**Case ID No.** 24883

*PCW Revision March 02, 2005*

**Reg. Ent. Reference No.** RN104293857

**Additional ID No(s).** Tire Registration 455100041

**Media [Statute]** Waste Tires

**Enf. Coordinator** J. Mac Vilas

**Violation Number**

**Primary Rule Cite(s)**

**Secondary Rule Cite(s)**

**Violation Description**

Failure to monitor for vectors and utilize vector control measures at least once every two weeks for the storage of over 500 tires outside. Mosquito larvae was observed by the City of Beaumont on December 8,2004 at the site.

**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>
	Potential	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	

>> **Programmatic Matrix**

		Major	Moderate	Minor	
Falsification		<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text"/>

Matrix Notes

Mosquitoes and other vectors hatching in standing water or wet areas from tire storage sites could cause potential harm to human health and the environment by spreading disease when not controlled. As a result of this violation, human health or the environment could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

Three quarterly events are recommended from the inspection date of December 9, 2004 to the settlement termination date of July 5, 2005.

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

Respondent Alther Tyson dba AFP Tires  
 Case ID No. 24883  
 Reg. Ent. Reference No. RN104293857  
 Additional ID No(s). Tire Registration 455100041  
 Media [Statute] Waste Tires  
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**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	\$500	08-Dec-2004	31-Dec-2005	1.1	\$27	\$532	\$558
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  
 Estimated annual costs to monitor and control vectors. Date required is the date the City of Beaumont documented mosquito larvae at the site and the final date is the estimated date of compliance.

Approx. Cost of Compliance **\$500**

**TOTAL \$558**

# Compliance History

Customer/Respondent/Owner-Operator: CN602641714 TYSON, ALTHER Classification: AVERAGE Rating: 3.500  
Regulated Entity ID Number(s): RN104293857 AFP TIRES Classification: AVERAGE Site Rating: 3.50  
TIRES REGISTRATION 455100041  
Location: 3475 COLLEGE ST, BEAUMONT, TX, 77701 Rating Date: 9/1/04 Repeat Violator: NO  
TCEQ Region: REGION 10 - BEAUMONT  
Date Compliance History Prepared: March 08, 2005  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: March 08, 2000 to March 08, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: J. Mac Vilas, P.G. Phone: (512) 239-2557

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Tyson, Alther
4. If Yes, who was/were the prior owner(s)? Denson, Jimmy R.
5. When did the change(s) in ownership occur? June 7, 2004

## 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.)  
1. 07/22/2004 (274750)  
2. 02/04/2005 (344223)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 07/22/2004 (274750)  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 328, SubChapter F 328.56(a)(1), 328.56(d)(2) and 328.60(a)  
Description: Failure to obtain a registration as a scrap tire generator and storage site.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 328, SubChapter F 328.56(d)(4)  
Description: Failure to monitor for vectors and to utilize vector control measures for tires stored outside.
- 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  
ALThER TYSON DBA AFP TIRES,  
RN104293857

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2005-0464-MSW-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Alther Tyson dba AFP Tires ("Ms. Tyson").

The Commission makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Ms. Tyson owns and operates a tire shop and scrap tire storage facility located at 3475 College Street in Beaumont, Jefferson County, Texas (the "Facility").
2. The Facility involves the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection on December 9, 2004, a TCEQ Beaumont Regional Office investigator documented that Ms. Tyson:
  - a. failed to obtain registration as a scrap tire generator and storage site while storing in excess of 500 used or scrap tires;
  - b. failed to monitor vectors and utilize vector control measures at least once very two weeks for the storage of over 500 tires outside.

4. Ms. Tyson received notice of the violations on or about February 9, 2005.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Alther Tyson dba AFP Tires" (the "EDPRP") in the TCEQ Chief Clerk's office on November 14, 2005.
6. By letter dated November 14, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Tyson with notice of the EDPRP. According to the return receipt "green card", Ms. Tyson received notice of the EDPRP on January 10, 2006, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Ms. Tyson received notice of the EDPRP, provided by the Executive Director. Ms. Tyson failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Ms. Tyson is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Ms. Tyson failed to obtain registration as a scrap tire generator and storage site while storing in excess of 500 used or scrap tires, in violation of 30 TEX. ADMIN. CODE §§ 328.56(a) (1), 328.56(d) (2) and 328.60(a).
3. As evidenced by Finding of Fact No. 3.b., Ms. Tyson failed to monitor vectors and utilize vector control measures at least once every two weeks for the storage of over 500 tires outside, in violation of 30 TEX. ADMIN. CODE § 328.56(d) (4).
4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Ms. Tyson with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 8, Ms. Tyson has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Ms. Tyson and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Ms. Tyson for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of six thousand three hundred dollars (\$6,300.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

#### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Ms. Tyson is assessed an administrative penalty in the amount of six thousand three hundred dollars (\$6,300.00) for violations of TEX. HEALTH & SAFETY CODE ch. 361 and rules of the TCEQ. The payment of this administrative penalty and Ms. Tyson's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Alther Tyson dba AFP Tires; Docket No. 2005-0464-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. Ms. Tyson shall undertake the following technical requirements:

- a. Within 60 days after the effective date of the Commission Order, Ms. Tyson shall reduce the quantity of scrap tires the Facility to less than 500 or obtain a scrap tire registration, in accordance with 30 TEX. ADMIN. CODE § 328.60; and
- b. Within 75 days after the effective date of the Commission Order, Ms. Tyson shall submit written certification as described below, and include detailed supporting documentation including photographs receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.

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.”

Ms. Tyson shall submit copies of documentation to

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

and

Derek Eades, Waste Section Manager  
Texas Commission on Environmental Quality  
Beaumont Regional Office  
3870 Eastex Fwy.  
Beaumont, Texas 77703-1892

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Ms. Tyson. Ms. Tyson is ordered to give notice of this Order to personnel who maintain day-to-day control over the Plant/Facility/Site operations referenced in this Order.

5. If Ms. Tyson fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Ms. Tyson's failure to comply is not a violation of this Order. Ms. Tyson shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Ms. Tyson shall notify the Executive Director within seven days after Ms. Tyson becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Ms. Tyson shall be made in writing to the Executive Director. Extensions are not effective until Ms. Tyson receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Ms. Tyson if the Executive Director determines that Ms. Tyson has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Alther Tyson dba AFP Tires  
DOCKET NO. 2005-0464-MSW-E  
Page 6

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF XAVIER GUERRA**

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

“My name is Xavier Guerra. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, Shannon L. Strong filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Alther Tyson dba AFP Tires” (the “EDPRP”) with the Office of the Chief Clerk on November 14, 2005.

Shannon L. Strong sent the EDPRP to Ms. Tyson at her last known address on November 14, 2005, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Ms. Tyson received notice of the EDPRP on January 10, 2006, as evidenced by the signature on the card.

More than 20 days have elapsed since Ms. Tyson received notice of the EDPRP. Ms. Tyson failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.

  
Xavier Guerra  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Xavier Guerra, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 31<sup>st</sup> day of July, A.D., 2007.

Notary Stamp  
Notary without Bond

NOTARY PUBLIC  
STATE OF TEXAS  
CYNTHIA L. WILLIAMS  
Notary Public, State of Texas  
My Commission Expires  
JULY 17, 2010

  
Notary Signature