

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2006-0921-MSW-E TCEQ ID: RN104899166 CASE NO.: 30108
RESPONDENT NAME: BRADLEY S. MCCLURE AND HEATHER L. MCCLURE**

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

SITE WHERE VIOLATION(S) OCCURRED: 261 Bronco Drive, Abilene, Taylor County

TYPE OF OPERATION: Tire transporter service

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 10, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Tom Jecha, Waste Enforcement Section, MC 149, (512) 239- 2576

TCEQ Regional Contact: Mr. Mike Taylor, Abilene Regional Office, MC R-3, (325) 698-6122

Respondent: Mr. Bradley S. McClure and Heather L. McClure, Owners, McClure Tire Services, LLC, 261 Bronco Drive, Abilene, Texas 79602

Mr. Jon E. Bos, Registered Agent, 401 Pine Street, Suite 203, Abilene, Texas 79601

Respondent's Attorney: Mr. David M. Hurst, Attorney, 534 Pine Street, Suite 101, Abilene, Texas 79601.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 7, 2006</p> <p>Date of NOE Relating to this Case: June 27, 2006</p> <p>Background Facts: An EDPRP was filed on April 16, 2007. An Agreed Order was signed on November 4, 2007.</p> <p>Current Compliance Status: The Respondent is not yet in compliance.</p> <p>MSW:</p> <p>1. Failed to obtain a tire storage site registration [30 TEX. ADMIN. CODE § 328.60(a) and TEX. HEALTH & SAFETY CODE § 361.112(a)].</p> <p>2. Failed to provide documentation used to support activities related to the accumulation, handling and shipment of used or scrap tires and failing to maintain complete and accurate manifests [30 TEX. ADMIN. CODE §§ 328.58(f)(1) and (2) and 328.57(c)(2)].</p> <p>3. Failed to have a trailer used for transporting used or scrap tires properly identified [30 TEX. ADMIN. CODE § 328.54(d)].</p>	<p>Total Assessed: \$2,005</p> <p>Total Deferred: \$0</p> <p>Total Paid to General Revenue: \$355/\$1,650</p> <p>The Respondent has paid \$355 of the administrative penalty. The remaining amount of \$1,650 of the administrative penalty shall be payable in eleven months of \$150 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" 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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Technical Requirements</p> <p>The Respondent shall:</p> <p>1. Immediately:</p> <p>a. Cease to permit any additional tires to be stored, processed, or disposed of at the Site until such time as registration is obtained; and</p> <p>b. Make available documentation used to support activities related to the accumulation, handling and shipment of used or scrap tires and begin keeping records of manifests that are complete and accurate.</p> <p>2. Within 30 days, properly identify all trailers used to transport used or scrap tires.</p> <p>3. Within 45 days, submit written certification to demonstrate compliance.</p>

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision May 19, 2005

DATES	Assigned	05-July-2006	Screening	06-July-2006	EPA Due	
	PCW	03-Apr-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Bradley S. McClure and Heather L. McClure
Reg. Ent. Ref. No.	RN104899166
Facility/Site Region	3-Abilene <input type="checkbox"/>
Major/Minor Source	Minor Source <input type="checkbox"/>

CASE INFORMATION			
Enf./Case ID No.	30108	No. of Violations	3
Docket No.	2006-0921-MSW-E	Order Type	1660 <input type="checkbox"/>
Media Program(s)	Municipal Solid Waste <input type="checkbox"/>	Enf. Coordinator	Cari-Michel La Caille
Multi-Media		EC's Team	Enforcement Team 4 <input type="checkbox"/>
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,100
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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	\$155
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Notes The respondent has had one NOV for a same or similar violation within the last five years.

Culpability	No <input type="checkbox"/>	0% Enhancement	Subtotal 4	\$0
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Notes The respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>
N/A	x	(mark with a small x)
Notes	The respondent does not meet the good faith criteria.	

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$18	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$700	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,255
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OTHER FACTORS AS JUSTICE MAY REQUIRE	38% Reduction	Adjustment	-\$1,250
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes Recommend reduction so that the record keeping/reporting violations do not overly impact the penalty.

Final Penalty Amount	\$2,005
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,005
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral offered for non-expedited settlement.

PAYABLE PENALTY	\$2,005
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Screening Date	06-July-2006	Docket No.	2006-0921-MSW-E	PCW
Respondent	Bradley S. McClure and Heather L. McClure			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	30108			<i>PCW Revision May 19, 2005</i>
Reg. Ent. Reference No.	RN104899166			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Cari-Michel La Caille			

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</i>	0	0%
	<i>Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (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	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)

>> Repeat Violator (Subtotal 3)

<input type="text" value="No"/>	Adjustment Percentage (Subtotal 3) <input type="text" value="0%"/>
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>> Compliance History Person Classification (Subtotal 7)

<input type="text" value="Average Performer"/>	Adjustment Percentage (Subtotal 7) <input type="text" value="0%"/>
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>> Compliance History Summary

Compliance History Notes	The respondent has had one NOV for a same or similar violation within the last five years.
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Total Adjustment Percentage (Subtotals 2, 3, & 7)

Screening Date	06-July-2006	Docket No.	2006-0921-MSW-E	PCW
Respondent	Bradley S. McClure and Heather L. McClure			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	30108			<i>PCW Revision May 19, 2005</i>
Reg. Ent. Reference No.	RN104899166			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Cari-Michel La Caille			
Violation Number	<input type="text" value="1"/>			
Primary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 328.60(a)"/>			
Secondary Rule Cite(s)	<input type="text" value="Tex. Health & Safety Code § 361.112(a)"/>			
Violation Description	Failure to obtain a tire storage site registration as required. Specifically, the respondent failed to obtain a storage site registration prior to accumulating and storing in excess of 700 used or scrap tires on the ground or 2,700 used or scrap tires in containers.			
Base Penalty	<input type="text" value="\$10,000"/>			

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

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

<i>mark only one use a small x</i>	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

One quarterly event is recommended based on the June 7, 2006 investigation date to the enforcement screening date of July 6, 2006.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$13"/>	Violation Final Penalty Total <input type="text" value="\$647"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$647"/>	

Economic Benefit Worksheet

Respondent Bradley S. McClure and Heather L. McClure
Case ID No. 30108
Reg. Ent. Reference No. RN104899166
Media [Statute] 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
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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	\$500	07-June-2006	15-Jan-2007	0.5	\$13	n/a	\$13
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: The estimated cost is the cost to obtain a tire storage site registration. The date required is the date of the investigation and the final date is the projected 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 \$500

TOTAL \$13

Screening Date	06-July-2006	Docket No.	2006-0921-MSW-E	PCW
Respondent	Bradley S. McClure and Heather L. McClure			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	30108			<i>PCW Revision May 19, 2005</i>
Reg. Ent. Reference No.	RN104899166			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Cari-Michel La Caille			

Violation Number	2
Primary Rule Cite(s)	30 Tex. Admin. Code §§ 328.58(f)(1) and (2) and 328.57(c)(2)
Secondary Rule Cite(s)	
Violation Description	Failure to make readily available documentation used to support activities related to the accumulation, handling and shipment of used or scrap tires and failure to maintain complete and accurate manifests. Specifically, the manifests were not made readily available at the time of the initial investigation on March 24, 2006, but were submitted during a follow-up investigation conducted on June 12, 2006. The manifests provided did not correctly track the delivery of the used or scrap tires from the original generator to the final authorized disposal site.

Base Penalty \$10,000

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

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

>> **Programmatic Matrix**

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

Matrix Notes

Adjustment -\$9,500

Base Penalty Subtotal \$500

Violation Events

Number of Violation Events

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

Violation Base Penalty \$2,000

One single event is recommended for each incomplete manifest submitted.

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount

Violation Final Penalty Total \$1,294

This violation Final Assessed Penalty (adjusted for limits) \$1,294

Economic Benefit Worksheet

Respondent: Bradley S. McClure and Heather L. McClure
Case ID No.: 30108
Reg. Ent. Reference No.: RN104899166
Media [Statute]: Municipal Solid Waste
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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				0.0	\$0	n/a	\$0
Other (as needed)	\$100	07-June-2006	15-Jan-2007	0.5	\$3	n/a	\$3

Notes for DELAYED costs

The estimated cost to properly meet the requirements of maintaining an accurate and complete manifest system. The date required is the date of the investigation and the final date is the projected 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 \$100

TOTAL \$3

Screening Date	06-July-2006	Docket No.	2006-0921-MSW-E	PCW
Respondent	Bradley S. McClure and Heather L. McClure			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	30108			<i>PCW Revision May 19, 2005</i>
Reg. Ent. Reference No.	RN104899166			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Cari-Michel La Caille			
Violation Number	3			
Primary Rule Cite(s)	30 Tex. Admin. Code § 328.54(d)			
Secondary Rule Cite(s)				
Violation Description	Failure to have vehicle or trailers used to transport used or scrap tires properly identified. Specifically, the respondent had one trailer on site at the time of the investigation conducted on June 7, 2006 that did not have the required identification on the rear of the vehicle.			
Base Penalty	\$10,000			

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

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential				

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
				X	
Matrix Notes	30% of the rule requirement was not met.				

Adjustment -\$9,900

Base Penalty Subtotal \$100

Violation Events

Number of Violation Events 1

<i>mark only one use a small x</i>	<i>daily</i>	
	<i>monthly</i>	
	<i>quarterly</i>	
	<i>semiannual</i>	
	<i>annual</i>	
	<i>single event</i>	X

Violation Base Penalty \$100

One single event is recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$3	Violation Final Penalty Total \$65
This violation Final Assessed Penalty (adjusted for limits) \$65	

Economic Benefit Worksheet

Respondent Bradley S. McClure and Heather L. McClure
Case ID No. 30108
Reg. Ent. Reference No. RN104899166
Media [Statute] Municipal Solid Waste
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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				0.0	\$0	n/a	\$0
Other (as needed)	\$100	7-June-2006	15-Jan-2007	0.5	\$3	n/a	\$3

Notes for DELAYED costs: The estimated cost to meet the requirements of properly identifying trailers used to transport used or scrap tires. The date required is the date of the investigation and the final date is the projected 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 \$100

TOTAL \$3

Compliance History

Customer/Respondent/Owner-Operator:	CN602565152	MCCLURE, HEATHER L	Classification: AVERAGE	Rating: 5.0
Regulated Entity:	RN104899166	MCCLURE TIRE SERVICES	Classification: AVERAGE	Site Rating: 5.0
ID Number(s):	TIRES	REGISTRATION	6200044	
	TIRES	REGISTRATION	6200044	
Location:	857 PINE ST, ABILENE, TX, 79601			
TCEQ Region:	REGION 03 - ABILENE			
Date Compliance History Prepared:	April 03, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 03, 2002 to April 03, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	N/A	Phone:	512-239-1387	

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? | 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

Compliance History

Customer/Respondent/Owner-Operator:	CN602565152	MCCLURE, BRADLEY S	Classification: AVERAGE	Rating: 5.0
Regulated Entity:	RN104899166	MCCLURE TIRE SERVICES	Classification: AVERAGE	Site Rating: 5.0
ID Number(s):	TIRES	REGISTRATION	6200044	
	TIRES	REGISTRATION	6200044	
Location:	857 PINE ST, ABILENE, TX, 79601			
TCEQ Region:	REGION 03 - ABILENE			
Date Compliance History Prepared:	April 03, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 03, 2002 to April 03, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	N/A		Phone:	512-239-1387

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? | 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
BRADLEY S. MCCLURE AND
HEATHER L. MCCLURE;
RN104899166

§
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BEFORE THE

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2006-0921-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Bradley S. McClure and Heather L. McClure ("Mr. and Mrs. McClure"), under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. and Mrs. McClure, represented by David M. Hurst, Attorney at Law, P. C., appear before the Commission and together stipulate that:

1. Mr. and Mrs. McClure own and operate a tire transporter service at 261 Bronco Drive in Abilene, Taylor County, Texas (the "Site"). Mr. and Mrs. McClure own the real property located at the Site.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Commission Mr. and Mrs. McClure agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. and Mrs. McClure are subject to the Commission's jurisdiction.
4. Mr. and Mrs. McClure received notice of the violations alleged in Section II ("Allegations") on or about July 2, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. and Mrs. McClure 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 dollars (\$2,005.00) is assessed jointly and severally against Mr. and Mrs. McClure by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. and Mrs. McClure have paid three hundred fifty-five dollars (\$355.00) of the administrative penalty. The remaining amount of one thousand six hundred fifty dollars (\$1,650.00) of the administrative penalty shall be payable in eleven monthly payments of one hundred fifty dollars (\$150.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. and Mrs. McClure fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. and Mrs. McClure to meet the payment schedule of this Agreed Order constitutes the failure of Mr. and Mrs. McClure to timely and satisfactorily comply with all of the terms of this Agreed Order.
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 Mr. and Mrs. McClure 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 Mr. and Mrs. McClure have 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

Mr. and Mrs. McClure are alleged to have violated:

1. 30 TEX. ADMIN. CODE § 328.60(a) and TEX. HEALTH & SAFETY CODE § 361.112(a) by failing to obtain a tire storage site registration as required, as documented during an inspection conducted on June 7, 2006 by a TCEQ Abilene Regional Office investigator.
2. 30 TEX. ADMIN. CODE §§ 328.58(f)(1) and (2) and 328.57(c)(2) by failing to provide documentation used to support activities related to the accumulation, handling and shipment of used or scrap tires and failing to maintain complete and accurate manifests, as documented during an inspection conducted on June 7, 2006 by a TCEQ Abilene Regional Office investigator.
3. 30 TEX. ADMIN. CODE § 328.54(d) by failing to have a trailer used for transporting used or scrap tires properly identified, as documented during an inspection conducted on June 7, 2006 by a TCEQ Abilene Regional Office investigator.

III. DENIALS

McClure Tire and Mr. and Mrs. McClure generally deny each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. and Mrs. McClure pay an administrative penalty as set forth in Section I, Paragraph six above. The payment of this administrative penalty and Mr. and Mrs. McClure'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Bradley S. McClure and Heather L. McClure, Docket No. 2006-0921-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. Mr. and Mrs. McClure shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Mr. and Mrs. McClure shall:
 - i. Cease to permit any additional tires to be stored, processed, or disposed of at the Site until such time as registration is obtained in accordance with 30 TEX. ADMIN. CODE § 328.60 or remove all stored scrap tires on the ground or in trailers to an authorized scrap tire facility in accordance with 30 TEX. ADMIN. CODE § 328.57; and
 - ii. Make available documentation, requested by the Executive Director, used to support activities related to the accumulation, handling and shipment of used or scrap tires and begin keeping records of manifests that are complete and accurate in accordance with 30 TEX. ADMIN. CODE §§ 328.57 and 328.58.
 - b. Within 30 days after the effective date of this Agreed Order, Mr. and Mrs. McClure shall properly identify all trailers used to transport used or scrap tires in accordance with 30 TEX. ADMIN. CODE § 328.54.
 - c. Within 45 days after the effective date of this Agreed Order, Mr. and Mrs. McClure 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 Nos. 2.a. and 2.b.

The certification language 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:

Mike Taylor, Waste Section Manager
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. and Mrs. McClure. Mr. and Mrs. McClure are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If Mr. and Mrs. McClure fail 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, Mr. and Mrs. McClure's failure to comply is not a violation of this Agreed Order. Mr. and Mrs. McClure shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. and Mrs. McClure shall notify the Executive Director within seven days after Mr. and Mrs. McClure become 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 Mr. and Mrs. McClure shall be made in writing to the Executive Director. Extensions are not effective until Mr. and Mrs. McClure receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

Agreed Order

Bradley S. McClure and Heather L. McClure

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6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. and Mrs. McClure 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) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. and Mrs. McClure, or three days after the date on which the Commission mails notice of the Order to Mr. and Mrs. McClure, 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

Greggory Penland

For the Executive Director

2/27/08
11-4-07 *BBP*

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that 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.

Bradley S McClure
Signature

11-4-07
Date

Bradley S McClure
Name (Printed or typed)
Authorized representative of Bradley S. McClure

Owner
Title

Heather L McClure
Signature

11-4-07
Date

Heather L McClure
Name (Printed or typed)
Authorized representative of Heather L. McClure

Owner
Title