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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1217-MSW-E TCEQ ID: RN104605845 CASE NO.: 30699
RESPONDENT NAME: EDDIE BEALE DBA JOHNSONS TIRE SERVICE

ORDER TYPE:		
<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	
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: 306 County Road 811, Nacogdoches, Nacogdoches County</p> <p>TYPE OF OPERATION: Unauthorized used and scrap tire storage site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p>INTERESTED PARTIES No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 12, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Mr. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Mr. Marlin Bullard, Waste Enforcement Section, MC R-9, (254) 761-3038</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838</p> <p style="margin-left: 20px;">Respondent: Mr. Eddie Beale, Owner, Johnsons Tire Service, 218 Pearl Street, Nacogdoches, Texas 75961</p> <p style="margin-left: 20px;">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:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: March 31, 2006 through April 12, 2006</p> <p>Date of NOE Relating to this Case: June 9, 2006</p> <p>Background Facts: The EDPRP was filed on June 25, 2007. It was sent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on June 27, 2007, as evidenced by the signature on the card. The Respondent failed to respond to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>MSW:</p> <p>1. Failed to ensure that scrap tires are transported by a registered transporter to an authorized site [30 TEX. ADMIN. CODE § 328.56(b)].</p> <p>2. Failed to obtain a scrap tire storage site registration prior to storing more than 500 used and/or scrap tires on the ground [30 TEX. ADMIN. CODE § 328.60(a)].</p>	<p>Total Assessed: \$6,300</p> <p>Total Deferred: \$0</p> <p>Total Due to General Revenue: \$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>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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease accepting scrap and/or used tires for storage until the required authorization is obtained. 2. Within 30 days, obtain a scrap tire storage site registration or remove all scrap and/or used tires currently stored at the Site and ensure they are transported by a registered tire transporter to an authorized site, and that proper documentation is used. 3. Within 45 days, submit written certification to demonstrate compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	12-Jun-2006	Screening	9-Aug-2006	EPA Due	
	PCW	1-May-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Eddie Beale dba Johnsons Tire Service
Reg. Ent. Ref. No.	RN104605845
Facility/Site Region	10-Beaumont
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	30699	No. of Violations	2
Docket No.	2006-1217-MSW-E	Order Type	1660
Media Program(s)	Waste Tires	Enf. Coordinator	Mike Limos
Multi-Media		EC's Team	EnforcementTeam 8
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **\$6,000**

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* **\$300**

Notes Enhancement due to one NOV for same or similar violations at this site within the past five years.

Culpability No 0% Enhancement *Subtotal 4* **\$0**

Notes Respondent does not meet the culpability criteria.

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

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

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$128 **0% Enhancement*** *Subtotal 6* **\$0**
Approx. Cost of Compliance \$1,500 **Capped at the Total EB \$ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* **\$6,300**

OTHER FACTORS AS JUSTICE MAY REQUIRE *Adjustment* **\$0**

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

Notes

Final Penalty Amount **\$6,300**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **\$6,300**

DEFERRAL *Reduction Adjustment* **\$0**

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

Notes

Deferral not offered for non-expedited settlement

PAYABLE PENALTY **\$6,300**

Screening Date 9-Aug-2006

Docket No. 2006-1217-MSW-E

PCW

Respondent Eddie Beale dba Johnsons Tire Service

Policy Revision 2 (September 2002)

Case ID No. 30699

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN104605845

Media [Statute] Waste Tires

Enf. Coordinator Mike Limos

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)	1	5%
	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 judgements 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%
<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) 5%

>> 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

Enhancement due to one NOV for same or similar violations at this site within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 9-Aug-2006

Docket No. 2006-1217-MSW-E

PCW

Respondent Eddie Beale dba Johnsons Tire Service

Policy Revision 2 (September 2002)

Case ID No. 30699

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN104605845

Media [Statute] Waste Tires

Enf. Coordinator Mike Limos

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 328.56(b)

Violation Description

Failed to ensure that scrap tires are transported by a registered transporter to an authorized facility, as documented during an investigation conducted on March 31, 2006. Specifically, the respondent allowed approximately 600-700 tires to be transported to an unauthorized site (owned by the respondent) by unregistered tire transporters.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

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

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed protective levels.

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

One single event is recommended.

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: Eddie Beale dba Johnsons Tire Service
Case ID No.: 30699
Reg. Ent. Reference No.: RN104605845
Media: 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
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$500	31-Mar-2006	3-Oct-2007	1.5	\$3	\$50	\$53
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

Estimated cost of using a registered tire transporter to transport tires to an authorized facility calculated from the investigation date to 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	\$53
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Screening Date 9-Aug-2006

Docket No. 2006-1217-MSW-E

PCW

Respondent Eddie Beale dba Johnsons Tire Service

Policy Revision 2 (September 2002)

Case ID No. 30699

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN104605845

Media [Statute] Waste Tires

Enf. Coordinator Mike Limos

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 328.60(a)

Violation Description

Failed to obtain a scrap tire storage site registration prior to storing more than 500 used and/or scrap tires on the ground, as documented during an investigation conducted on March 31, 2006. Specifically, the respondent failed to obtain a storage site registration prior to storing approximately 600-700 used and/or scrap tires on the ground.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2

131 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Two quarterly events are recommended from the March 31, 2006 investigation date to the August 9, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$75

Violation Final Penalty Total \$5,250

This violation Final Assessed Penalty (adjusted for limits) \$5,250

Economic Benefit Worksheet

Respondent Eddie Beale dba Johnsons Tire Service
Case ID No. 30699
Reg. Ent. Reference No. RN104605845
Media 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
<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	31-Mar-2006	3-Oct-2007	1.5	\$75	n/a	\$75
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a scrap tire storage registration calculated from the investigation date to 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 \$1,000

TOTAL \$75

Compliance History

Customer/Respondent/Owner-Operator:	CN602832206 BEALE, EDDIE	Classification: AVERAGE	Rating: 6.00
Regulated Entity:	RN104605845 JOHNSONS TIRE SERVICE	Classification: AVERAGE	Site Rating: 6.00
ID Number(s):			
Location:	306 COUNTY ROAD 811, NACOGDOCHES COUNTY	Rating Date: 9/1/2006	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	February 15, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 15, 2002 to February 15, 2007		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Mike Limos</u>	Phone:	<u>512.239.5839</u>

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.)
1 06/09/2006 (481157)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|-----------------|----------|
| Date: | 08/05/2005 (399437) | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 328, SubChapter F 328.56(b) | | |
| Description: | Failure to ensure that scrap tires are transported by a registered transporter to an authorized facility. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 328, SubChapter F 328.60(a) | | |
| Description: | Failure to obtain registration for a scrap/used tire storage site. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 328, SubChapter F 328.56(c) | | |
| Description: | No manifest was used for the removal of tires taken to 306 CR 811. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 328, SubChapter F 328.56(d)(4) | | |
| Description: | Failure to take appropriate measures to control vectors. | | |
- 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
EDDIE BEALE DBA JOHNSONS
TIRE SERVICE;
RN104605845

§
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§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2006-1217-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 Eddie Beale dba Johnsons Tire Service ("Mr. Beale").

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

FINDINGS OF FACT

1. Mr. Beale owns and operates an unauthorized used and scrap tire storage site located at 306 County Road 811, Nacogdoches, Nacogdoches County, Texas (the "Site").
2. The Site involves the management and/or disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted March 31, 2006, through April 12, 2006, a TCEQ Beaumont Regional Office investigator documented that Mr. Beale:
 - a. Failed to ensure that scrap tires are transported by a registered transporter to an authorized site. Specifically, Mr. Beale allowed approximately 600-700 tires to be transported to the Site by unregistered tire transporters; and

- b. Failed to obtain a scrap tire storage site registration prior to storing more than 500 used and/or scrap tires on the ground. Specifically, Mr. Beale failed to obtain a storage site registration prior to storing approximately 600-700 used and/or scrap tires on the ground at the Site.
4. Mr. Beale received notice of the violations on or about June 14, 2006.
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 Eddie Beale dba Johnsons Tire Service" (the "EDPRP") in the TCEQ Chief Clerk's office on June 25, 2007.
6. By letter dated June 25, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Beale with notice of the EDPRP. According to the return receipt "green card," Mr. Beale received notice of the EDPRP on June 27, 2007, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Beale received notice of the EDPRP, provided by the Executive Director. Mr. Beale 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, Mr. Beale is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Beale failed to ensure that scrap tires are transported by a registered transporter to an authorized site, in violation of 30 TEX. ADMIN. CODE § 328.56(b).
3. As evidenced by Finding of Fact No. 3.b., Mr. Beale failed to obtain a scrap tire storage site registration prior to storing more than 500 used and/or scrap tires on the ground, in violation of 30 TEX. ADMIN. CODE § 328.60(a).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Beale 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. 7, Mr. Beale 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 Mr. Beale 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 Mr. Beale for violations of 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. Mr. Beale is assessed an administrative penalty in the amount of six thousand three hundred dollars (\$6,300.00) for violations of the Texas Health & Safety Code and the rules of the TCEQ. The payment of this administrative penalty and Mr. Beale'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: Eddie Beale dba Johnsons Tire Service; Docket No. 2006-1217-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. Beale shall undertake the following technical requirements:
- a. Immediately upon the effective date of this Order, Mr. Beale shall cease accepting scrap and/or used tires for storage until the required authorization is obtained, in accordance with 30 TEX. ADMIN. CODE § 328.60(a)
 - b. Within 30 days after the effective date of this Order, Mr. Beale shall obtain a scrap tire storage site registration or remove all scrap and/or used tires currently stored at the Site and ensure they are transported by a registered tire transporter to an authorized site, and that proper documentation is used, such as manifests, work orders, invoices, or other records to document the removal and management of these tires, in accordance with 30 TEX. ADMIN. CODE §§ 328.60(a) and 328.56(b) and (c).
 - c. Within 45 days after the effective date of this Order, Mr. Beale shall submit written certification and detailed supporting documentation, including photographs, receipts, and 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.”

Mr. Beale shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. 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:

Derek Eades, Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
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 Mr. Beale. Mr. Beale is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Mr. Beale 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, Mr. Beale's failure to comply is not a violation of this Order. Mr. Beale shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Beale shall notify the Executive Director within seven days after Mr. Beale 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 Mr. Beale shall be made in writing to the Executive Director. Extensions are not effective until Mr. Beale 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 Mr. Beale if the Executive Director determines that Mr. Beale 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.

Eddie Beale dba Johnsons Tire Service
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF LENA ROBERTS

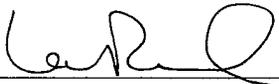
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Lena Roberts. 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, 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 Eddie Beale dba Johnsons Tire Service” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 25, 2007.

The EDPRP was mailed to Mr. Beale at his last known address on June 25, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Beale received notice of the EDPRP on June 27, 2007, as evidenced by the signature on the card.

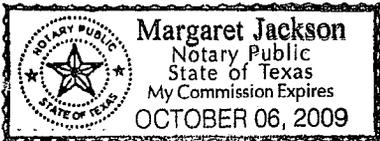
More than 20 days have elapsed since Mr. Beale received notice of the EDPRP. Mr. Beale failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Lena Roberts, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 9th day of August, A.D., 2007.





Notary Signature