

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-2059-MSW-E TCEQ ID: RN104150289 CASE NO.: 32002
RESPONDENT NAME: WILKE TIRE SERVICE, INC.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 1202 S. Port Ave., Corpus Christi, Nueces County</p> <p>TYPE OF OPERATION: A tire maintenance shop that generates and transports scrap tires</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 location.</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 March 10, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492 TCEQ Regional Contact: Mr. Brad Genzer, Corpus Christi Regional Office, MC R-14, (361) 825-3106 Respondent: Mr. Donald Wilke, Wilke Tire Service, Inc., 1202 S. Port Ave., Corpus Christi, TX 78405-2308 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 checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: There were no complaints.</p> <p>Dates of Investigation Relating to this Case: September 13, 2006</p> <p>Date of NOE Relating to this Case: November 7, 2006</p> <p>Background Facts: The EDPRP was filed on April 20, 2007. The Respondent filed an Answer on April 30, 2007. The case was referred to SOAH on August 1, 2007. The Respondent signed an Agreed Order on January 3, 2008.</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 obtain a scrap tire storage registration required for generators who store more than 500 used or scrap tires on the ground [30 TEX. ADMIN. CODE § 328.56(d)(2) and TEX. HEALTH & SAFETY CODE § 361.112(a)].</p> <p>2. Failed to ensure that scrap tires or scrap tires pieces were transported to an authorized facility [30 TEX. ADMIN. CODE § 328.56(b)].</p>	<p>Total Assessed: \$5,250</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid/Due to General Revenue: \$1,000/\$4,250</p> <p>The Respondent has paid \$1000 of the administrative penalty. The remaining amount of \$4,250 shall be payable in 5 monthly installments of \$850 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Technical Requirements</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, ensure that all scrap tires are transported to an authorized facility and begin maintaining manifests for any scrap tires transported off-site for disposal. 2. Within 30 days, obtain a scrap tire registration or reduce the number of tires being stored on site to 500 or less. 3. Within 45 days, submit written certification to demonstrate compliance with the technical requirements above.



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	3-Nov-2006	Screening	30-Nov-2006	EPA Due	
	PCW	4-Sep-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Wilke Tire Service, Inc.
Reg. Ent. Ref. No.	RN104150289
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Major

CASE INFORMATION				
Enf./Case ID No.	32002	No. of Violations	2	
Docket No.	2006-2059-MSW-E	Order Type	1660	
Media Program(s)	Waste Tires	Enf. Coordinator	Michael Meyer	
Multi-Media		EC's Team	Enforcement Team 8	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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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	\$250
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Notes: One previous NOV for same or similar violations.

Culpability	No	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		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

Good Faith Effort to Comply	0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$15	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$350		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,250
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$5,250
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,250
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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 cases.

PAYABLE PENALTY	\$5,250
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Screening Date 30-Nov-2006

Docket No. 2006-2059-MSW-E

PCW

Respondent Wilke Tire Service, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32002

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN104150289

Media [Statute] Waste Tires

Enf. Coordinator Michael Meyer

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 judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 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

One previous NOV for same or similar violations.

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

Screening Date 30-Nov-2006

Docket No. 2006-2059-MSW-E

PCW

Respondent Wilke Tire Service, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32002

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN104150289

Media [Statute] Waste Tires

Enf. Coordinator Michael Meyer

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 328.56(d)(2) and Tex. Health & Safety Code § 361.112(a)

Violation Description

Failed to obtain a scrap tire storage registration required for generators who store more than 500 used or scrap tires on the ground, as documented during an investigation conducted on September 13, 2006. Specifically, the investigator estimated approximately 1,200 used or scrap tires on the ground at the Facility.

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 percent of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

78 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event from the September 13, 2006 investigation to the November 30, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent: Wilke Tire Service, Inc.
 Case ID No. 32002
 Reg. Ent. Reference No. RN104150289
 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)				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	\$100	13-Sep-2006	15-Aug-2007	0.9	\$5	n/a	\$5
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to register the site as a scrap tire storage facility. The Date Required is the September 13, 2006 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

\$5

Screening Date 30-Nov-2006

Docket No. 2006-2059-MSW-E

PCW

Respondent Wilke Tire Service, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32002

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN104150289

Media [Statute] Waste Tires

Enf. Coordinator Michael Meyer

Violation Number 2

Rule Cite(s)

30 Tex Admin. Code § 328.56(b)

Violation Description

Failure to ensure that scrap tires or scrap tires pieces were transported to an authorized facility, as documented during an investigation conducted on September 13, 2006. Specifically, the Respondent admitted to transporting used or scrap tires to the El Centro Landfill and WT Tire Disposal. The El Centro Landfill and WT Tire Disposal facilities are not authorized to accept scrap tires or scrap tire pieces.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

78 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event from the September 13, 2006 investigation to the November 30, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$10

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent Wilke Tire Service, Inc.
Case ID No. 32002
Reg. Ent. Reference No. RN104150289
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	Overtime Costs	EB Amount
No commas or \$							

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)	\$250	13-Sep-2006	15-Jul-2007	0.8	\$10	n/a	\$10

Notes for DELAYED costs

Estimated cost to develop and implement operational procedures for ensuring that scrap tires are transported to an authorized facility. The Date Required is the September 13, 2006 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

\$250

TOTAL

\$10

Compliance History

Customer/Respondent/Owner-Operator:	CN602560898 Wilke Tire Service, Inc.	Classification: AVERAGE	Rating: 3.50
Regulated Entity:	RN104150289 WILKE TIRE SERVICE INC	Classification: AVERAGE	Site Rating: 4.00
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED TIRES	ID NUMBER REGISTRATION	COT0011 5533
Location:	1202 S PORT AVE, CORPUS CHRISTI, TX, 78405		Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region:	REGION 14 - CORPUS CHRISTI		
Date Compliance History Prepared:	January 03, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 20, 2001 to December 19, 2006		

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

Name: Michael Meyer Phone: (512) 239-4492

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 11/03/2006 (512286)
 - 2 11/03/2006 (514893)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 02/11/2004 (261740)
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 328, SubChapter F 328.56(d)(2)
 - Description: Failure to obtain a scrap tire storage registration prior to storing more than 500 used or scrap tires on the ground.
 - Self Report? NO Classification: Minor
 - Citation: 30 TAC Chapter 328, SubChapter F 328.56(d)(3)
 - Description: Failure to sort, mark, classify, and arrange good used tires for sale to the consumer in an organized manner.
- 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
WILKE TIRE SERVICE, INC.,
RN104150289

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2006-2059-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 Wilke Tire Service, Inc., ("Wilke") 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 Wilke appear before the Commission and together stipulate that:

1. Wilke owns and operates a tire maintenance shop that generates and transports scrap tires located at 1202 S. Port Ave., Corpus Christi, Nueces County, Texas (the "Facility").
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 and Wilke agree that the Commission has jurisdiction to enter this Agreed Order, and that Wilke is subject to the Commission's jurisdiction.
4. Wilke received notice of the violations alleged in Section II ("Allegations") on or about November 7, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Wilke of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of five thousand two hundred fifty dollars (\$5,250.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Wilke has paid one thousand dollars (\$1,000.00) of the administrative

penalty. The remaining amount of four thousand two hundred fifty dollars (\$4,250.00) of the administrative penalty shall be payable in five monthly payments of eight hundred fifty dollars (\$850.00) each. The next 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 Wilke fails 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 Wilke to meet the payment schedule of this Agreed Order constitutes the failure by Wilke 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 Wilke 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 Wilke has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Wilke is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 328.56(d)(2) and TEX. HEALTH & SAFETY CODE § 361.112(a) by failing to obtain a scrap tire storage registration required for generators who store more than 500 used or scrap tires on the ground, as documented during an investigation conducted on September 13, 2006. Specifically, the investigator estimated approximately 1,200 used or scrap tires on the ground at the Facility.
2. 30 TEX. ADMIN. CODE § 328.56(b) by failing to ensure that scrap tires or scrap tires pieces were transported to an authorized facility, as documented during an investigation conducted

on September 13, 2006. Specifically, the Respondent admitted to transporting used or scrap tires to WT Disposal. WT Tire Disposal is not authorized to accept scrap tires or scrap tire pieces.

III. DENIALS

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

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Wilke pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Wilke'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: Wilke Tire Service, Inc., Docket No. 2006-2059-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. Wilke shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Wilke shall ensure that all scrap tires are transported to an authorized facility and begin maintaining manifests for any scrap tires transported off-site for disposal in accordance with 30 TEX. ADMIN. CODE § 328.56(b) and (c);
 - b. Within 30 days after the effective date of this Agreed Order, Wilke shall obtain a scrap tire registration or reduce the number of tires being stored on site to 500 or less, in accordance with 30 TEX. ADMIN. CODE § 328.56(d)(2); and
 - c. Within 45 days after the effective date of this Agreed Order, Wilke shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

and

Brad Genzer, Waste Section Manager
Texas Commission on Environmental Quality
Corpus Christi Regional Office
NRC Bldg., Ste. 1200
6300 Ocean Dr., Unit 5839
Corpus Christ, TX 78412-5839

3. The provisions of this Agreed Order shall apply to and be binding upon Wilke. Wilke is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Wilke fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Wilke's failure to comply is not a violation of this Agreed Order. Wilke shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Wilke shall notify the Executive Director within seven days after Wilke becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Wilke shall be made in writing to the Executive Director. Extensions are not effective until Wilke receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Wilke 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 Wilke, or three days after the date on which the Commission mails notice of the Order to Wilke, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Wilke Tire Service, Inc.
DOCKET NO. 2006-2059-MSW-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Handwritten Signature]

2/27/08

For the Executive Director

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.

[Handwritten Signature]

1-3-08

Signature

Date

Donald Wilke

owner

Name (Printed or typed)

Title

Authorized representative of
Wilke Tire Service, Inc.