

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0616-MSW-E **TCEQ ID:** RN103074969 **CASE NO.:** 37537

RESPONDENT NAME: Servando De La Garza dba UTW Tire Collection Services

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: UTW Tire Co, 401 Thiesel Road, Laredo, Webb County</p> <p>TYPE OF OPERATION: Land Reclamation Project Using Tires ("LRPUT")</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 October 12, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Clinton Sims, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-6933; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Servando De La Garza, Owner, UTW Tire Collection Services, P.O. Box 450692, Laredo, Texas 78045 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 5, 2009</p> <p>Date of NOV/NOE Relating to this Case: March 31, 2009 (NOB)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to obtain a registration amendment prior to expanding outside the authorized boundaries of a LRP. Specifically, the dimensions of the LRP were measured and documented at 560 x 760 feet which exceeds the TCEQ approved dimensions of 300 x 400 feet. An amendment to obtain authorization for the expansion had not been submitted, nor approved by, the agency [30 TEX. ADMIN. CODE § 328.66(a)].</p> <p>2) Failure to obtain authorization prior to processing scrap tires. Specifically, the Respondent was actively processing scrap tires without obtaining an authorization [30 TEX. ADMIN. CODE § 328.63(c)].</p> <p>3) Failure to obtain authorization for a scrap tire storage facility. Specifically, scrap tire pieces equivalent to approximately 15,000 whole scrap tires were observed on the ground on top of the LRP and had not been incorporated into the LRP [30 TEX. ADMIN. CODE § 328.66(j)].</p>	<p>Total Assessed: \$14,000</p> <p>Total Deferred: \$2,800 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$1,200 (remaining \$10,000 due in 10 monthly payments of \$1,000 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 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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. The Respondent incorporated all scrap tire pieces that were previously stored on the ground into the LRP on March 30, 2009; and</p> <p>b. The Respondent obtained a scrap tire processing registration on April 27, 2009.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of the Agreed Order, cease all expansion of LRP boundaries at the Facility until proper approval is obtained;</p> <p>b. Within 30 days after the effective date of this Agreed Order, remove all previously deposited scrap tire material that is outside of the TCEQ approved boundaries for LRP No. 6200005 and dispose at an authorized facility or obtain TCEQ approval of amended boundaries; and</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. through b.</p>

Additional ID No(s):27055



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned PCW	6-Apr-2009	Screening	24-Apr-2009	EPA Due	
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RESPONDENT/FACILITY INFORMATION	
Respondent	Servando De La Garza dba UTW Tire Collection Services
Reg. Ent. Ref. No.	RN103074869
Facility/Site Region	16-Laredo
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	37537	No. of Violations	3
Docket No.	2009-0616-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Clinton Sims
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes

Culpability **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit **Subtotal 6**

Total EB Amounts	\$31	<small>*Capped at the Total EB \$ Amount</small>
Approx. Cost of Compliance	\$2,500	

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 24-Apr-2009

Docket No. 2009-0616-MSW-E

PCW

Respondent Servando De La Garza dba UTW Tire Collection Service

Policy Revision 2 (September 2002)

Case ID No. 37537

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN103074969

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	1	5%
	Other written NOV's	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%
<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)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one NOV with same or similar violations.

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

Screening Date 24-Apr-2009	Docket No. 2009-0616-MSW-E	PCW	
Respondent Servando De La Garza dba UTW Tire Collection Services	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 37537	<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN103074989			
Media [Statute] Municipal Solid Waste			
Enf. Coordinator Clinton Sims			
Violation Number <input type="text" value="1"/>			
Rule Cite(s)	30 Tex. Admin. Code § 328.66(a)		
Violation Description	Failed to obtain a registration amendment prior to expanding outside the authorized boundaries of a Land Reclamation Project Using Tires ("LRPUT"). Specifically, the dimensions of the LRPUT were measured and documented at 560 x 760 feet which exceeds the TCEQ approved dimensions of 300 x 400 feet. An amendment to obtain authorization for the expansion had not been submitted to, nor approved by, the agency.		
Base Penalty		<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix			
Harm			
Release	Major	Moderate	Minor
OR			
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
			Percent <input type="text" value="0%"/>
>> Programmatic Matrix			
Falsification			
			Percent <input type="text" value="25%"/>
Matrix Notes	100% of the rule requirement was not met.		
Adjustment			<input type="text" value="\$7,500"/>
			<input type="text" value="\$2,500"/>
Violation Events			
Number of Violation Events	<input type="text" value="2"/>	Number of violation days	<input type="text" value="60"/>
<small>mark only one with an x</small>	daily	<input type="text"/>	
	weekly	<input type="text"/>	
	monthly	<input checked="" type="text" value="x"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
Violation Base Penalty			<input type="text" value="\$5,000"/>
Two monthly events are recommended from the March 6, 2009 investigation date to the April 24, 2009 screening date.			
Good Faith Efforts to Comply			<input type="text" value="\$0"/>
0.0% Reduction			
<small>Before NOV NOV to EDRP/Settlement Offer</small>			
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	x	<small>(mark with x)</small>	
Notes	The Respondent does not meet the good faith criteria for this violation.		
Violation Subtotal			<input type="text" value="\$5,000"/>
Economic Benefit (EB) for this violation			Statutory Limit Test
Estimated EB Amount	<input type="text" value="\$20"/>	Violation Final Penalty Total	<input type="text" value="\$5,250"/>
This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$5,250"/>

Economic Benefit Worksheet

Respondent Servando De La Garza dba UTW Tire Collection Services
Case ID No. 37537
Reg. Ent. Reference No. RN103074969
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$500	5-Mar-2009	29-Dec-2009	0.82	\$20	n/a	\$20
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a registration amendment for boundary expansion of the LRPUT. The Date Required is the investigation date and the Final Date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$20

Screening Date 24-Apr-2009	Docket No. 2009-0616-MSW-E	PCW	
Respondent Servando De La Garza dba UTW Tire Collection Services	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 37537	<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN103074969			
Media [Statute] Municipal Solid Waste			
Enf. Coordinator Clinton Sims			
Violation Number <input type="text" value="2"/>			
Rule Cite(s)	30 Tex. Admin. Code § 328.63(c)		
Violation Description	Failed to obtain authorization prior to processing scrap tires. Specifically, the Respondent was actively processing scrap tires without obtaining an authorization.		
Base Penalty		<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix			
Harm			
Release	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
			Percent <input type="text" value="0%"/>
>>Programmatic Matrix			
Falsification	Major	Moderate	Minor
<input type="text"/>	x	<input type="text"/>	<input type="text"/>
			Percent <input type="text" value="25%"/>
Matrix Notes	100% of the rule requirement was not met.		
Adjustment		<input type="text" value="\$7,500"/>	
		<input type="text" value="\$2,500"/>	
Violation Events			
Number of Violation Events <input type="text" value="2"/>		Number of violation days <input type="text" value="50"/>	
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$5,000"/>
	weekly	<input type="text"/>	
	monthly	x	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
Two monthly events are recommended from the March 5, 2009 investigation date to the April 24, 2009 screening date.			
Good Faith Efforts to Comply		10.0% Reduction <input type="text" value="\$500"/>	
	Before NOV	NOV to EDRP/Seitlment Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	x	
N/A	(mark with x)		
Notes	The Respondent came into compliance on April 27, 2009.		
Violation Subtotal		<input type="text" value="\$4,500"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount <input type="text" value="\$7"/>		Violation Final Penalty Total <input type="text" value="\$4,750"/>	
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$4,750"/>	

Economic Benefit Worksheet

Respondent Sevando De La Garza dba UTW Tire Collection Services
Case ID No. 37537
Reg. Ent. Reference No. RN103074969
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description. No commas or \$:

Delayed Costs

Equipment			0.00	\$0	\$0	\$0	
Buildings			0.00	\$0	\$0	\$0	
Other (as needed)			0.00	\$0	\$0	\$0	
Engineering/construction			0.00	\$0	\$0	\$0	
Land			0.00	\$0	n/a	\$0	
Record Keeping System			0.00	\$0	n/a	\$0	
Training/Sampling			0.00	\$0	n/a	\$0	
Remediation/Disposal			0.00	\$0	n/a	\$0	
Permit Costs	\$1,000	5-Mar-2009	27-Apr-2009	0.15	\$7	n/a	\$7
Other (as needed)			0.00	\$0	n/a	\$0	

Notes for DELAYED costs
 Estimated cost to submit an application and obtain a scrap tire processing registration. The Date Required is the investigation date and the Final Date is the date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,000 **TOTAL** \$7

Screening Date 24-Apr-2009	Docket No. 2009-0616-MSW-E	PCW			
Respondent Servando De La Garza dba UTW Tire Collection Services	<small>Policy Revision 2 (September 2002)</small>				
Case ID No. 37537	<small>PCW Revision October 30, 2008</small>				
Reg. Ent. Reference No. RN103074969					
Media [Statute] Municipal Solid Waste					
Enf. Coordinator Clinton Sims					
Violation Number <input type="text" value="3"/>					
Rule Cite(s)	30 Tex. Admin. Code § 328.66(j)				
Violation Description	Failed to obtain authorization for a scrap tire storage facility. Specifically, scrap tire pieces equivalent to approximately 15,000 whole scrap tires were observed on the ground on top of the LRPOT and had not been mixed with soil and incorporated into the LRPOT.				
Base Penalty		<input type="text" value="\$10,000"/>			
>> Environmental, Property and Human Health Matrix					
OR	Harm			Percent <input type="text" value="0%"/>	
	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" value="25%"/>
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	
Matrix Notes	100% of the rule requirement was not met.				
Adjustment		<input type="text" value="\$7,500"/>			
		<input type="text" value="\$2,500"/>			
Violation Events					
Number of Violation Events <input type="text" value="2"/>		Number of violation days <input type="text" value="60"/>			
<small>mark only one with an x</small>	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	x			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
		Violation Base Penalty <input type="text" value="\$5,000"/>			
Two monthly events are recommended from the March 5, 2009 investigation date to the April 24, 2009 screening date.					
Good Faith Efforts to Comply		25.0% Reduction		<input type="text" value="\$1,250"/>	
		<small>Before NOV</small>	<small>NOV to EDRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>		
Ordinary	x	<input type="text"/>	<input type="text"/>		
N/A	<input type="text"/>	<small>(mark with x)</small>			
Notes	The Respondent came into compliance on March 30, 2009.				
		Violation Subtotal <input type="text" value="\$3,750"/>			
Economic Benefit (EB) for this violation		Statutory Limit Test			
Estimated EB Amount <input type="text" value="\$3"/>		Violation Final Penalty Total		<input type="text" value="\$4,000"/>	
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$4,000"/>			

Economic Benefit Worksheet

Respondent Servando De La Garza dba UTW Tire Collection Services
Case ID No. 37537
Reg. Ent. Reference No. RN103074969
Media 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
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$1,000	5-Mar-2009	30-Mar-2009	0.07	\$3	n/a	\$3
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit an application and obtain a scrap tire storage registration. The Date Required is the investigation date and the Final Date is the date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$3

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603477118	Servando de La Garza	Classification:	Rating:
Regulated Entity:	RN103074969	UTW TIRE CO	Classification: AVERAGE	Site Rating: 1.00
ID Number(s):	TIRES		REGISTRATION	27055
	TIRES		REGISTRATION	6200005
Location:	401 THIESEL RD, LAREDO, TX, 78045			
TCEQ Region:	REGION 16 - LAREDO			
Date Compliance History Prepared:	June 04, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 04, 2004 to June 04, 2009			

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

Name: Clinton Sims Phone: 239 - 6933

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

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 03/31/2009 (737667)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 01/29/2008 (612811) CN603477118

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 328, SubChapter F 328.63(c)
 30 TAC Chapter 328, SubChapter F 328.63(c)(1)
 30 TAC Chapter 328, SubChapter F 328.63(c)(2)
 30 TAC Chapter 328, SubChapter F 328.63(c)(3)
 30 TAC Chapter 328, SubChapter F 328.63(c)(4)
 30 TAC Chapter 328, SubChapter F 328.63(c)(4)(A)
 30 TAC Chapter 328, SubChapter F 328.63(c)(4)(B)
 30 TAC Chapter 328, SubChapter F 328.63(c)(4)(C)
 30 TAC Chapter 328, SubChapter F 328.63(c)(4)(D)

30 TAC Chapter 328, SubChapter F 328.63(c)(4)(E)

30 TAC Chapter 328, SubChapter F 328.63(c)(4)(F)

30 TAC Chapter 328, SubChapter F 328.63(c)(4)(G)

30 TAC Chapter 328, SubChapter F 328.63(c)(5)

Description: Failure to register with the commission as a scrap tire processing facility prior to operation.

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
SERVANDO DE LA GARZA DBA
UTW TIRE COLLECTION SERVICES
RN103074969

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0616-MSW-E

I. JURISDICTION AND STIPULATIONS

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

1. The Respondent owns and operates a Land Reclamation Project Using Tires ("LRPUT") at 401 Thiesel Road in Laredo, Webb County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 5, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Fourteen Thousand Dollars (\$14,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The

Respondent has paid One Thousand Two Hundred Dollars (\$1,200) of the administrative penalty and Two Thousand Eight Hundred Dollars (\$2,800) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Ten Thousand Dollars (\$10,000) of the administrative penalty shall be payable in 10 monthly payments of One Thousand Dollars (\$1,000) 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 the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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 the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all 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 the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. The Respondent incorporated all scrap tire pieces that were previously stored on the ground into the LRPOT on March 30, 2009; and
 - b. The Respondent obtained a scrap tire processing registration on April 27, 2009.
10. 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 the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. 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.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to obtain a registration amendment prior to expanding outside the authorized boundaries of a Land Reclamation Project Using Tires ("LRPUT"), in violation of 30 TEX. ADMIN. CODE § 328.66(a), as documented during an investigation conducted on March 5, 2009. Specifically, the dimensions of the LRPUT were measured and documented at 560 x 760 feet which exceeds the TCEQ approved dimensions of 300 x 400 feet. An amendment to obtain authorization for the expansion had not been submitted to, nor approved by, the agency.
2. Failed to obtain authorization prior to processing scrap tires, in violation of 30 TEX. ADMIN. CODE § 328.63(c), as documented during an investigation conducted on March 5, 2009. Specifically, the Respondent was actively processing scrap tires without obtaining an authorization.
3. Failed to obtain authorization for a scrap tire storage facility, in violation of 30 TEX. ADMIN. CODE § 328.66(j), as documented during an investigation conducted on March 5, 2009. Specifically, scrap tire pieces equivalent to approximately 15,000 whole scrap tires were observed on the ground on top of the LRPUT and had not been incorporated into the LRPUT.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Servando De La Garza dba UTW Tire Collection Services, Docket No. 2009-0616-MSW-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of the Agreed Order, cease all expansion of LRPUT boundaries at the Facility until proper approval is obtained, in accordance with 30 TEX. ADMIN. CODE § 328.66;
 - b. Within 30 days after the effective date of this Agreed Order, remove all previously deposited scrap tire material that is outside of the TCEQ approved boundaries for LRPUT

No. 6200005 and dispose at an authorized facility or obtain TCEQ approval of amended boundaries; and

- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
Laredo Regional Office
Texas Commission on Environmental Quality
707 East Calton Road, Suite 304
Laredo, Texas 78041-3887

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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 the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent

receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

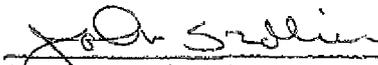
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

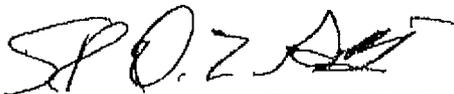
Date 9/18/09

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- 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;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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



Signature

9.15.09

Date



Name (Printed or typed)

OWNER

Title

Authorized Representative of
Servando De La Garza dba UTW Tire Collection Services

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