

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2009-1438-MLM-E TCEQ ID: RN105508394 CASE NO.: 36204**  
**RESPONDENT NAME: PATRICIA NELSON**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> <b>AIR</b>	<input checked="" type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input checked="" type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATIONS OCCURRED:</b> 14000 Block of Rollins Road, Winnie, Jefferson County</p> <p><b>TYPE OF OPERATION:</b> Unauthorized municipal solid waste site</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> Four complaints were received alleging that tires were being burned at the site. Complainants alleged that tires were routinely burned at the site and that thick, black smoke coming from the site made their eyes burn and made it hard to breathe even several days after the fire department extinguished the flames. A default order was issued against the co-owner of the site at the December 9, 2009, commission agenda. (Docket No. 2008-1140-MLM-E).</p> <p><b>INTERESTED PARTIES:</b> The complainants have not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired December 21, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="padding-left: 20px;"><b>TCEQ Attorney:</b> Ms. Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="padding-left: 20px;"><b>TCEQ Enforcement Coordinator:</b> Mr. Clinton Sims, Waste Enforcement Section, MC 169, (512) 239-6933</p> <p style="padding-left: 20px;"><b>TCEQ Regional Contact:</b> Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838</p> <p style="padding-left: 20px;"><b>Respondent:</b> Ms. Patricia Nelson, Owner, 2858 Annette Circle, Jacksonville, Florida 32216</p> <p style="padding-left: 20px;"><b>Respondent's Attorney:</b> Mr. Ted L. Walker, The Walker Firm, 402 Main Street, Ninth Floor, Houston, Texas 77002</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Dates of Complaints Relating to this Case:</b>  April 29, 2008, May 27, 2008, and May 29, 2008</p> <p><b>Date of Investigation Relating to this Case:</b>  June 2, 2008</p> <p><b>Date of NOE Relating to this Case:</b>  June 9, 2008</p> <p><b>Background Facts:</b>  The EDPRP was filed on October 3, 2008. The Respondent filed an answer and the case was referred to SOAH. The Respondent signed the Agreed Order on October 14, 2009.</p> <p><b>Current Compliance Status:</b>  The Respondent has not yet submitted documentation certifying compliance.</p> <p><b>MLM:</b></p> <ol style="list-style-type: none"> <li>Failed to comply with the general prohibition on outdoor burning [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to prevent the unauthorized disposal of scrap tires [30 TEX. ADMIN. CODE § 330.15(a)].</li> </ol>	<p><b>Total Assessed:</b> \$5,975</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b>  \$235/\$5,740</p> <p>The Respondent paid \$235 of the administrative penalty. The remaining amount of \$5,740 shall be payable in thirty-five monthly payments of \$164 each.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately: <ol style="list-style-type: none"> <li>Cease all unauthorized burning of scrap tires at the Site; and</li> <li>Cease disposing of any additional scrap tires at the Site.</li> </ol> </li> <li>Within 90 days, remove all scrap tires and dispose of the wastes at an authorized facility.</li> <li>Within 105 days, submit written certification to demonstrate compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	17-Jun-2008			
	<b>PCW</b>	9-Jul-2008	<b>Screening</b>	3-Jul-2008	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Patricia Nelson				
<b>Reg. Ent. Ref. No.</b>	RN105508394				
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	36204	<b>No. of Violations</b>	2		
<b>Docket No.</b>	2009-1438-MLM-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>	Air	<b>Enf. Coordinator</b>	Clinton Sims		
		<b>EC's Team</b>	Enforcement Team 7		
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$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.

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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Notes: No change due to average performer classification.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$4,211
Approx. Cost of Compliance	\$75,975

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$5,000
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	19.5%	<b>Adjustment</b>	\$975
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended adjusted to capture the avoided cost associated with the violations.

**Final Penalty Amount** \$5,975

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$5,975
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$5,975
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Screening Date 3-Jul-2008

Docket No. 2009-1438-MLM-E

PCW

Respondent Patricia Nelson

Policy Revision 2 (September 2002)

Case ID No. 36204

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105508394

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 NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	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) 0%

#### >> 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

No change due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

**Screening Date** 3-Jul-2008 **Docket No.** 2009-1438-MLM-E **PCW**  
**Respondent** Patricia Nelson *Policy Revision 2 (September 2002)*  
**Case ID No.** 36204 *PCW Revision June 12, 2008*  
**Reg. Ent. Reference No.** RN105508394  
**Media [Statute]** Municipal Solid Waste  
**Enf. Coordinator** Clinton Sims

**Violation Number** 1  
**Rule Cite(s)** 30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)  
**Violation Description** Failed to comply with the general prohibition on outdoor burning. Specifically, burning piles of shredded tires were observed during an investigation conducted on June 2, 2008.

**Base Penalty** \$10,000

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

OR	<b>Harm</b>			Percent
	Major	Moderate	Minor	
	Actual	x		
	Potential			

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent

**Matrix Notes** Human health or the environment has been exposed to significant amounts of pollutants which do not exceed protective levels.

**Adjustment** \$7,500

\$2,500

**Violation Events**

Number of Violation Events 1 1 Number of violation days

*mark only one with an x*

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$2,500

One single event is recommended.

**Good Faith Efforts to Comply** 0.0% Reduction \$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 for this violation.

**Violation Subtotal** \$2,500

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

**Estimated EB Amount** \$975 **Violation Final Penalty Total** \$2,988

**This violation Final Assessed Penalty (adjusted for limits)** \$2,988

## Economic Benefit Worksheet

**Respondent** Patricia Nelson  
**Case ID No.** 36204  
**Reg. Ent. Reference No.** RN105508394  
**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				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$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]	\$975	2-Jun-2008	2-Jun-2008	0.00	\$0	\$975	\$975
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to properly dispose of approximately 650 scrap tires that were disposed of by burning. The Date Required and the Final Date is the investigation date.

Approx. Cost of Compliance \$975

**TOTAL** \$975

**Screening Date** 3-Jul-2008 **Docket No.** 2009-1438-MLM-E **PCW**  
**Respondent** Patricia Nelson *Policy Revision 2 (September 2002)*  
**Case ID No.** 36204 *PCW Revision June 12, 2008*  
**Reg. Ent. Reference No.** RN105508394  
**Media [Statute]** Municipal Solid Waste  
**Enf. Coordinator** Clinton Sims

**Violation Number** 2  
**Rule Cite(s)** 30 Tex. Admin. Code § 330.15(a)  
**Violation Description** Failed to prevent the unauthorized disposal of scrap tires, as documented during an investigation conducted on June 2, 2008. Specifically, approximately 50,000 scrap tires were disposed of at the site.

**Base Penalty** \$10,000

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

OR	<b>Harm</b>			Percent
	Major	Moderate	Minor	
	Actual	x		
	Potential			

**>> Programmatic Matrix**

	Major	Moderate	Minor	Percent
				0%

**Matrix Notes** Human health or the environment has been exposed to significant amounts of pollutants which do not exceed protective levels.

**Adjustment** \$7,500  
\$2,500

**Violation Events**

Number of Violation Events 1 30 Number of violation days  
 mark only one with an x  
 daily  
 monthly x  
 quarterly  
 semiannual  
 annual  
 single event

**Violation Base Penalty** \$2,500

One monthly is recommended from the June 2, 2008 investigation date to the July 2, 2008 screening date.

**Good Faith Efforts to Comply** 0.0% Reduction \$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 for this violation.

**Violation Subtotal** \$2,500

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

**Estimated EB Amount** \$3,236 **Violation Final Penalty Total** \$2,988

**This violation Final Assessed Penalty (adjusted for limits)** \$2,988

## Economic Benefit Worksheet

**Respondent** Patricia Nelson  
**Case ID No.** 36204  
**Reg. Ent. Reference No.** RN105508394  
**Media** Municipal Solid Waste  
**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
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	\$75,000	2-Jun-2008	13-Apr-2009	0.86	\$3,236	n/a	\$3,236
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and properly dispose of approximately 50,000 scrap tires. 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 \$75,000

**TOTAL** \$3,236

# Compliance History

Customer/Respondent/Owner-Operator: CN603352337 NELSON, PATRICIA RAMSEY Classification: Rating:  
Regulated Entity: RN105508394 MCPIKE TIRE SITE Classification: Site Rating:

ID Number(s):

Location: 14000 BLK OF ROLLINS RD, WINNIE, TX,

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: August 06, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 06, 2008 to August 06, 2008

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

Name: Clinton Sims Phone: (512) 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 of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
PATRICIA NELSON;  
RN105508394**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2009-1438-MLM-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 Patricia Nelson ("Ms. Nelson") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE chs. 361 and 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Ms. Nelson, represented by Ted L. Walker of The Walker Firm, appear before the Commission and together stipulate that:

1. Ms. Nelson owns an unauthorized municipal solid waste site located at the 14000 Block of Rollins Road, Winnie, Jefferson County, Texas (the "Site").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TCEQ rules.
3. The Commission and Ms. Nelson agree that the Commission has jurisdiction to enter this Agreed Order and that Ms. Nelson is subject to the Commission's jurisdiction.
4. Ms. Nelson received notice of the violations alleged in Section II ("Allegations") on or about June 14, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Ms. Nelson of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of five thousand nine hundred seventy five dollars (\$5,975.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Ms. Nelson paid two hundred thirty-five dollars (\$235.00) of the administrative penalty. The remaining amount of five thousand seven hundred forty dollars (\$5,740.00) of the administrative penalty shall be payable in 35 monthly payments of one hundred sixty-four dollars (\$164.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Ms. Nelson 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, Ms. Nelson's failure to meet the payment schedule of this Agreed Order constitutes the failure by Ms. Nelson 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 Ms. Nelson 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 Ms. Nelson 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

1. During an investigation conducted on June 2, 2008, a TCEQ Beaumont Regional Office investigator documented that Ms. Nelson violated:
  - a. 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to comply with the general prohibition on outdoor burning. Specifically, burning piles of shredded tires were observed.

- b. 30 TEX. ADMIN. CODE § 330.15(a) by failing to prevent the unauthorized disposal of scrap tires. Specifically, approximately 50,000 tires were disposed of at the Site.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Ms. Nelson pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Ms. Nelson'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: Patricia Nelson, Docket No. 2009-1438-MLM-E" to:

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

2. Ms. Nelson shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, Ms. Nelson shall cease all unauthorized burning of scrap tires at the Site.
  - b. Immediately upon the effective date of this Agreed Order, Ms. Nelson shall cease disposing of any additional scrap tires at the Site.
  - c. Within 90 days of the effective date of this Agreed Order, Ms. Nelson shall remove all scrap tires and dispose of the wastes at an authorized facility.
  - d. Within 105 days after the effective date of this Agreed Order, Ms. Nelson 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 Nos. 2.a. through 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Ms. Nelson shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. to:

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

and

Derek Eades, Waste Section Manager  
Texas Commission on Environmental Quality  
Beaumont Regional Office  
3870 Eastex Freeway  
Beaumont, Texas 77703-1830

3. The provisions of this Agreed Order shall apply to and be binding upon Ms. Nelson. Ms. Nelson is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If Ms. Nelson 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, Ms. Nelson's failure to comply is not a violation of this Agreed Order. Ms. Nelson shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Ms. Nelson shall notify the Executive Director within seven days after Ms. Nelson 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

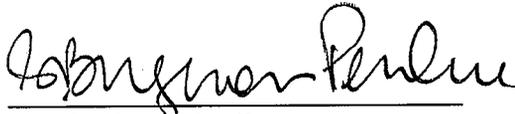
substantiated showing of good cause. All requests for extensions by Ms. Nelson shall be made in writing to the Executive Director. Extensions are not effective until Ms. Nelson receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission



\_\_\_\_\_  
For the Executive Director

12/22/09

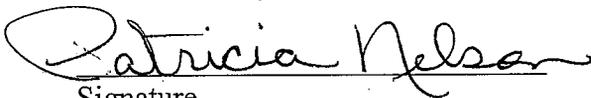
\_\_\_\_\_  
Date

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

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



\_\_\_\_\_  
Signature

10-14-09

\_\_\_\_\_  
Date

PATRICIA NELSON

\_\_\_\_\_  
Name (Printed or typed)

\_\_\_\_\_  
Title