

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1679-MSW-E TCEQ ID: RN104544614 CASE NO.: 34712**  
**RESPONDENT NAME: BENNY HERNANDEZ DBA IGM SCRAP TIRE**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 1312 Kennedy Street, Pharr, Hidalgo County

**TYPE OF OPERATION:** unauthorized scrap tire storage facility

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** One complaint was received, alleging that the Respondent was storing tires and causing a nuisance. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** The complainant has 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.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired January 18, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. John Shelton, Waste Enforcement Section, MC 128, (512) 239-2563

**TCEQ Regional Contact:** Mr. Jaime Garza, Harlingen Regional Office, MC R-15, (956) 430-6030

**Respondent:** Mr. Benny Hernandez, Owner, IGM Scrap Tire, P.O. Box 3651, McAllen, Texas 78502

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

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>Date of Complaint Relating to this Case:</b>            July 03, 2007</p> <p><b>Date of Investigation Relating to this Case:</b>            July 24, 2007</p> <p><b>Date of NOE Relating to this Case:</b>            August 24, 2007</p> <p><b>Background Facts:</b>            The EDRP was filed on October 6, 2008, and re-filed for service on April 30, 2009, and May 28, 2009. The Respondent filed an answer and the case was referred to SOAH. The Respondent failed to appear at the preliminary hearing. The ALJ found that the Respondent was served with proper notice of the preliminary hearing and remanded the case to the ED so that a default order may be entered.</p> <p><b>Current Compliance Status:</b>            The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>MSW:</b></p> <ol style="list-style-type: none"> <li>Failed to obtain a scrap tire storage site registration for a site that stores more than 500 used or scrap tires on the ground [30 TEX. ADMIN. CODE § 328.60(a)].</li> <li>Failed to identify any vehicle or trailer used to transport used or scrap tires or tire pieces on both sides and the rear of the vehicle with the name and place of business of the transporter and the commission registration number, using numbers and letters at least two inches tall [30 TEX. ADMIN. CODE § 328.54(d)].</li> <li>Failed to ensure that used or scrap tires or tire pieces are transported to an authorized scrap tire facility [30 TEX. ADMIN. CODE § 328.57(c)(3)].</li> </ol>	<p><b>Total Assessed:</b> \$ 7,875</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 Due to General Revenue:</b> \$7,875</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Order Justification:</b>            Indifference to legal duty.</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 cease accepting and/or disposing of any additional scrap tires at the Site until properly authorized.</li> <li>Within 15 days, ensure that the vehicle and/or trailer used to transport used or scrap tires or tire pieces is properly identified.</li> <li>Within 30 days, ensure that all unauthorized scrap tires at the Site are removed and properly disposed of at an authorized facility.</li> <li>Within 60 days, obtain a scrap tire storage site registration.</li> <li>Within 75 days, submit written certification to demonstrate compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	28-Aug-2007			
	<b>PCW</b>	18-Sep-2007	<b>Screening</b>	27-Sep-2007	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Benny Hernandez dba IGM Scrap Tire				
<b>Reg. Ent. Ref. No.</b>	RN104544614				
<b>Facility/Site Region</b>	15-Harlingen	<b>Major/Minor Source</b>	Major		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	34712	<b>No. of Violations</b>	3		
<b>Docket No.</b>	2007-1679-MSW-E	<b>Order Type</b>	Findings		
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Enf. Coordinator</b>	John Shelton		
<b>Multi-Media</b>		<b>EC's Team</b>	EnforcementTeam 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>	\$7,500
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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>	5% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$375
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Notes: One prior NOV with same or similar violation.

<b>Culpability</b>	No	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</b>	0% Reduction	<b>Subtotal 5</b>	\$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.

<b>0% Enhancement*</b>	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$668	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$15,408	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$7,875
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		<b>Adjustment</b>	\$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** \$7,875

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$7,875
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<b>DEFERRAL</b>	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:

No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$7,875
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**Screening Date** 27-Sep-2007      **Docket No.** 2007-1679-MSW-E  
**Respondent** Benny Hernandez dba IGM Scrap Tire  
**Case ID No.** 34712  
**Reg. Ent. Reference No.** RN104544614  
**Media [Statute]** Municipal Solid Waste  
**Enf. Coordinator** John Shelton

**PCW**

Policy Revision 2 (September 2002)  
 PCW Revision June 26, 2007

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 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 prior NOV with same or similar violation.

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

Screening Date 27-Sep-2007

Docket No. 2007-1679-MSW-E

PCW

Respondent Benny Hernandez dba IGM Scrap Tire

Policy Revision 2 (September 2002)

Case ID No. 34712

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN104544614

Media [Statute] Municipal Solid Waste

Enf. Coordinator John Shelton

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 328.60(a)

Violation Description Failed to obtain a scrap tire storage site registration for a site that stores more than 500 used or scrap tires on the ground, as documented during an investigation conducted on July 24, 2007. Specifically, Mr. Hernandez is storing approximately 10,108 whole used scrap tires in a residential area without a scrap tire storage site registration.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			X		
100% of the rule requirement was not met.					

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 66 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 is recommended from the July 24, 2007 investigation date to the September 28, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$215

Violation Final Penalty Total \$2,625

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

## Economic Benefit Worksheet

**Respondent** Benny Hernandez dba IGM Scrap Tire

**Case ID No.** 34712

**Reg. Ent. Reference No.** RN104544614

**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				0.0	\$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	\$5,000	24-Jul-2007	2-Jun-2008	0.9	\$215	n/a	\$215
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**  
 Estimated cost to submit a registration to process and store scrap tires. This includes the cost to retain a registered professional engineer to prepare and submit the registration. The Date Required is the investigation date 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 \$5,000 **TOTAL** \$215

Screening Date 27-Sep-2007

Docket No. 2007-1679-MSW-E

PCW

Respondent Benny Hernandez dba IGM Scrap Tire

Policy Revision 2 (September 2002)

Case ID No. 34712

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN104544614

Media [Statute] Municipal Solid Waste

Enf. Coordinator John Shelton

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 328.54(d)

Violation Description Failed to identify any vehicle or trailer used to transport used or scrap tires or tire pieces on both sides and the rear of the vehicle with the name and place of business of the transporter and the commission registration number, using numbers and letters at least two inches tall, as documented during an investigation conducted on July 24, 2007. Specifically, Mr. Hernandez' vehicle and trailer used for transportation of tires did not have any identification.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		X			
	100% of the rule requirement was not met.				
Adjustment					\$7,500

\$2,500

Violation Events

Number of Violation Events 1 66 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 is recommended from the July 24, 2007 investigation date to the September 28, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$18

Violation Final Penalty Total \$2,625

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

## Economic Benefit Worksheet

**Respondent** Benny Hernandez dba IGM Scrap Tire

**Case ID No.** 34712

**Reg. Ent. Reference No.** RN104544614

**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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$300	24-Jul-2007	2-Jun-2008	0.9	\$1	\$17	\$18
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly identify any vehicle or trailer used to transport used or scrap tires or tire pieces. The Date Required is the investigation date and the Final Date is the estimated 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 \$300

**TOTAL** \$18

Screening Date 27-Sep-2007

Docket No. 2007-1679-MSW-E

PCW

Respondent Benny Hernandez dba IGM Scrap Tire

Policy Revision 2 (September 2002)

Case ID No. 34712

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN104544614

Media [Statute] Municipal Solid Waste

Enf. Coordinator John Shelton

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 328.57(c)(3)

Violation Description Failed to ensure that used or scrap tires or tire pieces are transported to an authorized scrap tire facility, as documented during an investigation conducted on July 24, 2007. Specifically, Mr. Hernandez transported approximately 10,108 tires to a private residence instead of to an authorized facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				X
	Potential				25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.				
	Adjustment				\$7,500

\$2,500

Violation Events

Number of Violation Events 1 66 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 is recommended from the July 24, 2007 investigation date to the September 28, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$435

Violation Final Penalty Total \$2,625

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

## Economic Benefit Worksheet

**Respondent** Benny Hernandez dba IGM Scrap Tire

**Case ID No.** 34712

**Reg. Ent. Reference No.** RN104544614

**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
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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	\$10,108	24-Jul-2007	2-Jun-2008	0.9	\$435	n/a	\$435
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The approximate cost to transport approximately 10,108 whole used scrap tires (\$1.00 per tire) to a registered tire storage site. Date Required is the investigation date and Final Date is the expected date of compliance.

### Avoided Costs

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

Disposal				0.0	\$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 \$10,108

**TOTAL** \$435

# Compliance History

Customer/Respondent/Owner-Operator:	CN603222845	HERNANDEZ, BENNY	Classification: Average	Rating: 11.00
Regulated Entity:	RN104544614	IGM SCRAP TIRE	Classification: Average	Site Rating: 11.00
ID Number(s):	TIRES MUNICIPAL SOLID WASTE NON PERMITTED	REGISTRATION ID NUMBER		6200074 455150123
Location:	1312 KENNEDY ST, PHARR, TX, 78577			
TCEQ Region:	REGION 15 - HARLINGEN			
Date Compliance History Prepared:	September 27, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 27, 2002 to September 27, 2007			

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

Name: John Shelton Phone: (512) 239-2563

## 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.)
 

Date:	<b>04/18/2005</b>	(373438)	
Self Report?	NO		Classification: Major
Citation:	30 TAC Chapter 328, SubChapter F 328.60(a)		
Description:	Failure to obtain a scrap tire storage site registration prior to storing more than 500 used or scrap tires on the ground.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 328, SubChapter F 328.54(d)		
Description:	Failure to identify the vehicle and equipment used for the collection and transportation of used or scrap tires with the name and place of business of the transporter and the commission registration number.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 328, SubChapter F 328.57(c)(3)		
Description:	Failure to ensure that used or scrap tires or tire pieces are transported to an authorized scrap tire facility.		
  - 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  
BENNY HERNANDEZ  
DBA IGM SCRAP TIRE,  
RN104544614**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2007-1679-MSW-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Benny Hernandez dba IGM Scrap Tire ("Mr. Hernandez").

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

### **FINDINGS OF FACT**

1. Mr. Hernandez owns and operates an unauthorized scrap tire storage site located at 1312 Kennedy Street, Pharr, Hidalgo County, Texas (the "Site").
2. The Site involves the management and disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection conducted on July 24, 2007, a TCEQ Harlingen Regional Office investigator documented that Mr. Hernandez:
  - a. Failed to obtain a scrap tire storage site registration for a site that stores more than 500 used or scrap tires on the ground. Specifically, Mr. Hernandez is storing approximately 10,108 whole used scrap tires at the Site without a registration;
  - b. Failed to identify any vehicle or trailer used to transport used or scrap tires or tire pieces on both sides and the rear of the vehicle with the name and place of business of the transporter and the commission registration number, using numbers and letters

at least two inches tall. Specifically, Mr. Hernandez's vehicle and trailer used for transportation of tires did not have any identification; and

- c. Failed to ensure that used or scrap tires or tire pieces are transported to an authorized scrap tire facility. Specifically, Mr. Hernandez transported approximately 10,108 tires to the Site instead of to an authorized facility.
4. Mr. Hernandez received notice of the violations on or about August 29, 2007.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Benny Hernandez dba IGM Scrap Tire" (the "EDPRP") in the TCEQ Chief Clerk's office on May 28, 2009.
6. By letter dated May 28, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Hernandez with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Mr. Hernandez received notice of the EDPRP.
7. Mr. Hernandez filed an answer requesting a hearing on August 31, 2009, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings ("SOAH") on October 1, 2009.
8. On October 21, 2009, the TCEQ Chief Clerk mailed the Notice of the November 12, 2009 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Mr. Hernandez. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Mr. Hernandez received notice of the November 12, 2009 preliminary hearing.
9. On November 12, 2009 the Administrative Law Judge ("ALJ") convened the preliminary hearing, but Mr. Hernandez failed to appear. The ALJ made a finding that Mr. Hernandez was served with proper notice of the preliminary hearing and the Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.
10. The ALJ remanded the case by SOAH Order No. 1, Granting Motion to Dismiss and Remand, on November 12, 2009 so that TCEQ may dispose of the case on a default basis.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Hernandez is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Hernandez failed to obtain a scrap tire storage site registration for a site that stores more than 500 used or scrap tires on the ground, in violation of 30 TEX. ADMIN. CODE § 328.60(a).
3. As evidenced by Finding of Fact No. 3.b., Mr. Hernandez failed to identify any vehicle or trailer used to transport used or scrap tires or tire pieces on both sides and the rear of the vehicle with the name and place of business of the transporter and the commission registration number, using numbers and letters at least two inches tall, in violation of 30 TEX. ADMIN. CODE § 328.54(d).
4. As evidenced by Finding of Fact No. 3.c., Mr. Hernandez failed to ensure that used or scrap tires or tire pieces are transported to an authorized scrap tire facility, in violation of 30 TEX. ADMIN. CODE § 328.57(c)(3).
5. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Hernandez with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
6. As evidenced by Finding of Fact No. 7, Mr. Hernandez filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 30 TEX. ADMIN. CODE § 70.109.
7. As evidenced by Finding of Fact No. 8, Mr. Hernandez was provided proper notice of the preliminary hearing pursuant to TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE § 155.501(c) and (e)(2), and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
8. As evidenced by Finding of Fact No. 9, Mr. Hernandez failed to appear for the preliminary hearing. Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Mr. Hernandez and assess the penalty recommended by the Executive Director.

9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Hernandez for violations of the Texas Water Code and Texas Health & Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes."
10. An administrative penalty in the amount of seven thousand eight hundred seventy-five dollars (\$7,875.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

#### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Hernandez is assessed an administrative penalty in the amount of seven thousand eight hundred seventy-five dollars (\$7,875.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Hernandez's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Benny Hernandez dba IGM Scrap Tire; Docket No. 2007-1679-MSW-E" to:

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

2. Mr. Hernandez shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Order, Mr. Hernandez shall cease accepting and/or disposing of any additional scrap tires at the Site until properly authorized;
- b. Within 15 days after the effective date of this Order, Mr. Hernandez shall ensure that the vehicle and/or trailer used to transport used or scrap tires or tire pieces, is properly identified in accordance with 30 TEX. ADMIN. CODE § 328.54(d);
- c. Within 30 days after the effective date of this Order, Mr. Hernandez shall ensure that all unauthorized scrap tires at the Site are removed and properly disposed of at an authorized facility in accordance with 30 TEX. ADMIN. CODE § 328.57(c)(3); or
- d. Within 60 days after the effective date of this Order, Mr. Hernandez shall obtain a scrap tire storage site registration in accordance with 30 TEX. ADMIN. CODE §§ 328.55 and 328.60; and
- e. Within 75 days after the effective date of this Order, Mr. Hernandez 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. through 2.d.;

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.”

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

and

David Ramirez, Waste Section Manager  
Texas Commission on Environmental Quality  
Harlingen Regional Office  
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Hernandez. Mr. Hernandez is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Mr. Hernandez fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Hernandez's failure to comply is not a violation of this Order. Mr. Hernandez shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Hernandez shall notify the Executive Director within seven days after Mr. Hernandez becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Hernandez shall be made in writing to the Executive Director. Extensions are not effective until Mr. Hernandez receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Hernandez if the Executive Director determines that Mr. Hernandez has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Benny Hernandez dba IGM Scrap Tire  
Docket No. 2007-1679-MSW-E  
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**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF SHARESASA Y. ALEXANDER**

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS           §

“My name is Sharesa Y. Alexander. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

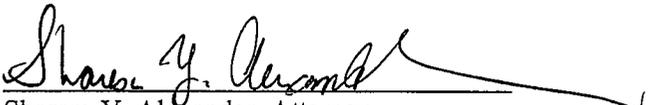
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Benny Hernandez dba IGM Scrap Tires” (the “EDPRP”) was filed with the Office of the Chief Clerk on May 28, 2009.

I sent the EDPRP to Mr. Hernandez at his last known address on May 28, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

Mr. Hernandez filed an answer requesting a hearing on August 31, 2009, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on October 1, 2009.

Notice of the November 12, 2009, preliminary hearing was mailed to Mr. Hernandez by the TCEQ Chief Clerk on October 21, 2009. The Notice was sent to Mr. Hernandez via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating that Mr. Hernandez received notice of the November 12, 2009 preliminary hearing.

Mr. Hernandez failed to appear at the preliminary hearing on November 12, 2009. At that hearing, I requested and received a finding that Mr. Hernandez was served with proper notice of the hearing pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(2). I also requested and received a remand from the Administrative Law Judge pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), which gives an ALJ the authority to remand the case back to the agency “to allow the agency to dispose of the case on a default basis under TEX. GOV’T CODE § 2001.056 and the referring agency’s rules.” Pursuant to TEX. GOV’T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against Mr. Hernandez and assess the penalty recommended by the Executive Director.

  
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Sharesa Y. Alexander, Attorney  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 23<sup>RD</sup> day of NOVEMBER A.D., 2009.

*Margaret Wilson*

Notary Signature

Notary Stamp

