

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2010-0428-MSW-E RN104150289 CASE NO. 39316**  
**RESPONDENT NAME: WILKE TIRE SERVICE, INC.**

<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:** 1202 South Port Avenue, Corpus Christi, Nueces County

**TYPE OF OPERATION:** tire maintenance shop

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** One complaint was received, alleging that scrap tires were being processed at the Facility without authorization. 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 Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired September 20, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**  
**TCEQ Attorney:** Ms. Anna Treadwell, Litigation Division, MC 175, (512) 239-3400  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400  
**TCEQ Enforcement Coordinator:** Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492  
**TCEQ Regional Contact:** Mr. Brad Genzer, Corpus Christi Regional Office, MC R-14, (361) 825-3106  
**Respondent:** Mr. Donald A. Wilke, President, Wilke Tire Service, Inc., 1202 South Port Ave., Corpus Christi, Texas 78405  
**Respondent's Attorney** Not represented by counsel on this enforcement matter.

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> December 9, 2009</p> <p><b>Date of Investigation Relating to this Case:</b> December 11, 2009</p> <p><b>Date of NOE Relating to this Case:</b> February 9, 2010</p> <p><b>Background Facts:</b> The EDPRP was filed on June 11, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on June 14, 2010. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>MSW:</b> Failed to obtain a registration to process scrap tires [30 TEX. ADMIN. CODE §328.63(c)].</p>	<p><b>Total Assessed:</b> \$3,600</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Due to General Revenue:</b> \$3,600</p> <p>This is a Default Order. 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 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>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately, cease the processing of scrap tires at the Facility; and</li> <li>2. Within 15 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	16-Feb-2010			
	<b>PCW</b>	11-Mar-2010	<b>Screening</b>	11-Mar-2010	<b>EPA Due</b>

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

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	39316	<b>No. of Violations</b>	1		
<b>Docket No.</b>	2010-0428-MSW-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Michael Meyer		
		<b>EC's Team</b>	Enforcement Team 6		
<b>Admin. Penalty \$ Limit</b>	<b>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>	\$3,000
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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>	20.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$600
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<b>Notes</b>	Enhancement for one previous 1660 Order.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<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	\$8	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$200	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$3,600
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$3,600
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$3,600
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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 indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$3,600
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**Screening Date** 11-Mar-2010

**Docket No.** 2010-0428-MSW-E

**PCW**

**Respondent** Wilke Tire Service, Inc.

Policy Revision 2 (September 2002)

**Case ID No.** 39316

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN104150289

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Michael Meyer

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	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)** 20%

**>> Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for one previous 1660 Order.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 20%

<b>Screening Date</b>	11-Mar-2010	<b>Docket No.</b>	2010-0428-MSW-E	<b>PCW</b>	
<b>Respondent</b>	Wilke Tire Service, Inc.	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b>	39316	<i>PCW Revision October 30, 2008</i>			
<b>Reg. Ent. Reference No.</b>	RN104150289				
<b>Media [Statute]</b>	Municipal Solid Waste				
<b>Enf. Coordinator</b>	Michael Meyer				
<b>Violation Number</b>	1				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 328.63(c)				
<b>Violation Description</b>	Failed to obtain a registration to process scrap tires, as documented during an investigation conducted on December 11, 2009. Specifically, the investigator observed scrap tires that had been cut into pieces to aid in volume reduction for transport.				
<b>Base Penalty</b>	\$10,000				
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
<b>OR</b>	<b>Release</b>	<b>Major</b>	<b>Harm</b>	<b>Minor</b>	
	Actual		Moderate		<b>Percent</b>
					0%
<b>&gt;&gt;Programmatic Matrix</b>					
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	<b>Percent</b>
		x			10%
<b>Matrix Notes</b>	100 percent of the rule requirement was not met.				
	<b>Adjustment</b>	\$9,000			
		\$1,000			
<b>Violation Events</b>					
	<b>Number of Violation Events</b>	3	<b>Number of violation days</b>	90	
<i>mark only one with an x</i>	daily			<b>Violation Base Penalty</b>	
	weekly				
	monthly	x			
	quarterly				
	semiannual				
	annual				
	single event				
	Three monthly events are recommended from the December 11, 2009 investigation to the March 11, 2010 screening date.			\$3,000	
<b>Good Faith Efforts to Comply</b>					
	<b>0.0%</b>	<b>Reduction</b>	\$0		
		Before NOV	NOV to EDPRP/Settlement		
Extraordinary					
Ordinary					
N/A	x		(mark with x)		
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.				
	<b>Violation Subtotal</b>	\$3,000			
<b>Economic Benefit (EB) for this violation</b>					
	<b>Estimated EB Amount</b>	\$8		<b>Statutory Limit Test</b>	
		<b>Violation Final Penalty Total</b>	\$3,600		
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$3,600		

## Economic Benefit Worksheet

**Respondent** Wilke Tire Service, Inc.  
**Case ID No.** 39316  
**Reg. Ent. Reference No.** RN104150289  
**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
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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	\$200	11-Dec-2009	15-Oct-2010	0.84	\$8	n/a	\$8
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit an application for a scrap tire processor 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				0.00	\$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

\$200

**TOTAL**

\$8

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602560898 Wilke Tire Service, Inc. Classification: AVERAGE Rating: 18.00  
Regulated Entity: RN104150289 WILKE TIRE SERVICE INC Classification: AVERAGE Site Rating: 18.00  
ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBERCOT0011  
TIRES REGISTRATION 6200374  
Location: 1202 S PORT AVE, CORPUS CHRISTI, TX, 78405

TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: March 11, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 11, 2005 to March 11, 2010

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

Name: Michael Meyer Phone: 239 - 4492

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/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: 9/1/2009 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.

Effective Date: 06/19/2008

ADMINORDER 2006-2059-MSW-E

Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.56(d)(2)

5B THSC Chapter 361, SubChapter A 361.112(a)

Description: Failure to obtain a scrap tire storage registration prior to storing more than 500 used or scrap tires on the ground.

Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.56(b)

Description: Failure to ensure that scrap tires were transported to an authorized facility.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 11/03/2006 (512286)

2 05/31/2007 (557842)

3 04/17/2009 (724706)

4 04/18/2009 (735842)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
WILKE TIRE SERVICE, INC.;  
RN104150289**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER**

**DOCKET NO. 2010-0428-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 Wilke Tire Service, Inc. (“Wilke”).

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

**FINDINGS OF FACT**

1. Wilke operates a tire maintenance shop that generates scrap tires located at 1202 South Port Avenue, Corpus Christi, Nueces County, Texas (the “Facility”).
2. The Facility involves the management and/or the disposal of used or scrap tires as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on December 11, 2009, a TCEQ Corpus Christi Regional Office investigator documented that Wilke failed to obtain a registration to process scrap tires. Specifically, the investigator observed scrap tires that had been cut into pieces to aid in volume reduction for transport.
4. Wilke received notice of the violation on or about February 14, 2010.
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 Wilke Tire Service, Inc.” (the “EDPRP”) in the TCEQ Chief Clerk’s office on June 11, 2010.

6. By letter dated June 11, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Wilke with notice of the EDPRP. According to the return receipt "green card," Wilke received notice of the EDPRP on June 14, 2010, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Wilke received notice of the EDPRP, provided by the Executive Director. Wilke failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Wilke is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Wilke failed to obtain a registration to process scrap tires, in violation of 30 TEX. ADMIN. CODE § 328.63(c).
3. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Wilke with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Wilke failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Wilke and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Wilke for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of three thousand six hundred dollars (\$3,600.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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. Wilke is assessed an administrative penalty in the amount of three thousand six hundred dollars (\$3,600.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Wilke'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: Wilke Tire Service, Inc.; Docket No. 2010-0428-MSW-E" to:

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

2. Wilke shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Wilke shall cease the processing of scrap tires at the Facility.
  - b. Within 15 days after the effective date of this Order, Wilke shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.a. 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."

Wilke shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a. 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  
Texas Commission on Environmental Quality  
Corpus Christi Regional Office  
6300 Ocean Drive, Unit 5839  
Corpus Christi, Texas 78412-5839

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Wilke. Wilke is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Wilke 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, Wilke's failure to comply is not a violation of this Order. Wilke shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Wilke shall notify the Executive Director within seven days after Wilke becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 Wilke shall be made in writing to the Executive Director. Extensions are not effective until Wilke receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
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 Wilke if the Executive Director determines that Wilke 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.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF ANNA M. TREADWELL**

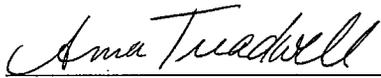
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Anna M. Treadwell. 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 Wilke Tire Service, Inc.” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 11, 2010.

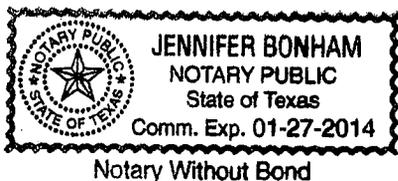
The EDPRP was mailed to Wilke at its last known address on June 11, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Wilke received notice of the EDPRP on June 14, 2010, as evidenced by the signature on the card.

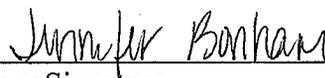
More than 20 days have elapsed since Wilke received notice of the EDPRP. Wilke failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”

  
\_\_\_\_\_  
Anna M. Treadwell, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Anna M. Treadwell, 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 day of July, A.D., 2010.



  
\_\_\_\_\_  
Notary Signature