Executive Summary – Enforcement Matter – Case No. 40796
Lonnie Bearden, Sr. d/b/a The Tireman
RN105949028
Docket No. 2010-1935-MLM-E

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
MLM – MSW and Scrap Tires

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
6803 North Grape Creek Road, San Angelo, Tom Green County

Type of Operation:
scrap tire transporter and unauthorized municipal solid waste disposal site

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	Respondent's scrap tire transporter registration is being revoked by this Order.
Interested Third-Parties:	The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: May 27, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed:	$13,440
Amount Deferred for Expedited Settlement:	N/A
Amount Deferred for Financial Inability to Pay:	N/A
Total Paid to General Revenue:	$0
Total Due to General Revenue:	$13,440

Compliance History Classifications:
Person/CN – Average
Site/RN – Average

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 40796
Lonnie Bearden, Sr. d/b/a The Tireman
RN105949028
Docket No. 2010-1935-MLM-E

Investigation Information

Complaint Date(s): September 8, 2010
Complaint Information: Alleged unauthorized storage of scrap tires at the site.

Date(s) of Investigation: October 1, 2010

Date(s) of NOV(s): July 13, 2010

Date(s) of NOE(s): November 18, 2010

Violation Information

1. Failed to maintain records as a scrap tire transporter using a manifest system and to retain copies of manifests, work orders and invoices for a period of at least three years [30 TEX. ADMIN. CODE § 328.57(c) and (d)].
2. Failed to submit annual reports to the Executive Director regarding transport of scrap tires each calendar year [30 TEX. ADMIN. CODE § 328.57(e)].
3. Failed to prevent the unauthorized disposal of municipal solid waste ("MSW") [30 TEX. ADMIN. CODE § 330.15(a) and (c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
N/A

Technical Requirements:

Respondent's scrap tire transporter registration is revoked immediately. Respondent may submit an application for a new tire transporter registration after a period of at least one year from the effective date of this Order. Respondent shall surrender his scrap tire transporter registration certificate to the TCEQ within 10 days.

1. Immediately, cease disposing of any additional scrap tires at the Site.
2. Within 30 days:
   a. Remove all scrap tires from the Site and dispose of them at an authorized facility; and
   b. Submit scrap tire transporting activity reports for calendar years 2007, 2008, and 2009.
3. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: March 29, 2011

Date(s) Green Card(s) Signed: Unclaimed

Contact Information

TCEQ Attorneys: Jeffrey Huhn, Litigation Division, (210) 403-4023
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ Enforcement Coordinator: Thomas Greimel, Water Enforcement Section, (512) 239-5690

TCEQ Regional Contact: Christopher Mayben, San Angelo Regional Office, (325) 655-9479

Respondent: Lonnie Bearden, 6803 North Grape Creek, San Angelo, TX 76901

Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	22-Nov-2010				
PCW	7-Mar-2011	Screening	23-Nov-2010	EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	Lonnie Bearden, Sr. dba The Tireman		
Reg. Ent. Ref. No.	RN105949028		
Facility/Site Region	8-San Angelo	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	40796	No. of Violations	3
Docket No.	2010-1935-MLM-E	Order Type	1660
Media Program(s)	Waste Tires	Government/Non-Profit	No
Multi-Media	Municipal Solid Waste	Enf. Coordinator	Thomas Greimel
		EC's Team	Enforcement Team 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **$12,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **5.0%** Enhancement *Subtotals 2, 3, & 7* **$625**

Notes: Enhancement for one NOV with same or similar violations.

Culpability No **0.0%** Enhancement *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments *Subtotal 5* **$0**

Economic Benefit **0.0%** Enhancement* *Subtotal 6* **$0**

Total EB Amounts $430
Approx. Cost of Compliance $2,910

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* **$13,125**

OTHER FACTORS AS JUSTICE MAY REQUIRE **2.4%** *Adjustment* **$315**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.

Final Penalty Amount **$13,440**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **$13,440**

DEFERRAL **0.0%** Reduction *Adjustment* **$0**

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.

PAYABLE PENALTY **$13,440**

Screening Date	23-Nov-2010	**Docket No.**	2010-1935-MLM-E	**PCW**
Respondent	Lonnie Bearden, Sr. dba The Tireman			*Policy Revision 2 (September 2002)*
Case ID No.	40796			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN105949028			
Media [Statute]	Waste Tires			
Enf. Coordinator	Thomas Greimel			

Compliance History Worksheet

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

Component	Number of...	*Enter Number Here*	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of 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%
		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same or similar violations.

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

Screening Date	23-Nov-2010	**Docket No.**	2010-1935-MLM-E	**PCW**
Respondent	Lonnie Bearden, Sr. dba The Tireman			*Policy Revision 2 (September 2002)*
Case ID No.	40796			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN105949028			
Media [Statute]	Waste Tires			
Enf. Coordinator	Thomas Greimel			

Violation Number 1

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

Violation Description Failed to maintain records as a scrap tire transporter using a manifest system and retain copies of manifests, work orders and invoices for a period of at least three years. Specifically, the Respondent transported scrap tires and did not maintain a recordkeeping system.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 1 — 54 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single penalty event is recommended based on the documentation of the violation during the October 1, 2010 investigation.

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

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $2,688

This violation Final Assessed Penalty (adjusted for limits) $2,688

Economic Benefit Worksheet

Respondent Lonnie Bearden, Sr. dba The Tireman
Case ID No. 40796
Reg. Ent. Reference No. RN105949028
Media Waste Tires
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System	$100	1-Oct-2010	31-Jul-2011	0.83	$4	n/a	$4
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: Estimated cost to maintain a record of scrap tire transport using a manifest system. Date Required is the investigation date and Final Date is the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$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 $100

TOTAL $4

Screening Date	23-Nov-2010	**Docket No.** 2010-1935-MLM-E	**PCW**
Respondent	Lonnie Bearden, Sr. dba The Tireman		*Policy Revision 2 (September 2002)*
Case ID No.	40796		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN105949028		
Media [Statute]	Waste Tires		
Enf. Coordinator	Thomas Greimel		

Violation Number 2

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

Violation Description Failed to submit annual reports to the executive director each calendar year regarding transport of scrap tires. Specifically, the Respondent's scrap tire registration was approved on November 8, 2007 and no annual reports of scrap tire transport activities have been submitted for calendar years 2007, 2008, and 2009.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 3 — 997 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty $7,500

Three annual events are recommended for each of the three years an annual scrap tire transporter report was not submitted.

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 $7,500

Economic Benefit (EB) for this violation

Estimated EB Amount $315

Statutory Limit Test

Violation Final Penalty Total $8,064

This violation Final Assessed Penalty (adjusted for limits) $8,064

Economic Benefit Worksheet

Respondent Lonnie Bearden, Sr. dba The Tireman
Case ID No. 40796
Reg. Ent. Reference No. RN105949028
Media Waste Tires
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				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	$150	1-Mar-2008	1-Mar-2010	2.00	$15	$300	$315
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	Avoided cost to submit annual transporter reports for calendar years 2007, 2008, and 2009. Date Required is the date the report for calendar year 2007 was due. Final Date is the date the report for calendar year 2009 was due.						

Approx. Cost of Compliance $150

TOTAL $315

Screening Date	23-Nov-2010	**Docket No.** 2010-1935-MLM-E	**PCW**
Respondent	Lonnie Bearden, Sr. dba The Tireman		*Policy Revision 2 (September 2002)*
Case ID No.	40796		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN105949028		
Media [Statute]	Waste Tires		
Enf. Coordinator	Thomas Greimel		

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 330.15(a) and (c)

Violation Description Failed to prevent the unauthorized disposal of municipal solid waste. Specifically, the Respondent disposed of greater than 1,500 scrap tires (approximately 150 cu. yds.) at the Site.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual			x
	Potential			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: 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 — 54 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One quarterly penalty event is recommended from the October 1, 2010 investigation date to the November 23, 2010 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

Estimated EB Amount $110

Statutory Limit Test

Violation Final Penalty Total $2,688

This violation Final Assessed Penalty (adjusted for limits) $2,688

Economic Benefit Worksheet

Respondent Lonnie Bearden, Sr. dba The Tireman
Case ID No. 40796
Reg. Ent. Reference No. RN105949028
Media Waste Tires
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal	$2,660	1-Oct-2010	31-Jul-2011	0.83	$110	n/a	$110
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to transport and dispose of approximately 1,500 scrap tires. The Date Required is the investigation date. 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				0.00	$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 $2,660

TOTAL $110

Compliance History

Customer/Respondent/Owner-Operator:	CN603687294	Lonnie Bearden, Sr.	Classification: AVERAGE	Rating: 6.00
Regulated Entity:	RN105949028	The Tireman	Classification: AVERAGE	Site Rating: 6.00
ID Number(s):	SCRAP TIRE REGISTRATION		REGISTRATION	6200455
Location:	6803 N GRAPE CREEK RD, SAN ANGELO, TX, 76901			
TCEQ Region:	REGION 08 - SAN ANGELO			
Date Compliance History Prepared:	November 22, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 22, 2005 to November 22, 2010			

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

Name: Thomas Greimel Phone: (512) 239-5690

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: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A

B. Any criminal convictions of the state of Texas and the federal government.
N/A

C. Chronic excessive emissions events.
N/A

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

1 07/13/2010 (828576)
2 11/18/2010 (873040)

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

Date: 07/13/2010 (828576)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 328, SubChapter F 328.57(c)(2)
30 TAC Chapter 328, SubChapter F 328.57(d)
30 TAC Chapter 328, SubChapter F 328.58(b)
Description: Failure to maintain accurate records by using a manifest system as required.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 328, SubChapter F 328.57(c)(3)
30 TAC Chapter 330, SubChapter A 330.15(a)(2)
Description: Failure to ensure that the scrap tires or tire pieces are transported to an authorized scrap tire facility.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 328, SubChapter F 328.57(e)
Description: Failure to submit an annual report of activities to the Texas Commission on Environmental Quality (TCEQ), for each calendar year of conducted transporting operations.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter E 330.60(a)
Description: Failure to obtain registration as a scrap tire storage site. The facility is currently a registered scrap tire transporter. The facility has stored used/scrap tires well in excess of the allowable 500 on the ground.

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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING LONNIE BEARDEN, SR. DBA THE TIREMAN; RN105949028	**§ § § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-1935-MLM-E

At its _____ agenda meeting, 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 , corrective action of the respondent, and revocation of the respondent's tire transporter registration. The respondent made the subject of this Order is Lonnie Bearden, Sr., d/b/a The Tireman ("Respondent").

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

FINDINGS OF FACT

1. Respondent holds Scrap Tire Transporter Registration No. 6200455 (the "Registration") and owns and operates an unauthorized municipal solid waste ("MSW") disposal site located at 6803 North Grape Creek Road in San Angelo, Tom Green County, Texas (the "Site"). The Site involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.

2. During an investigation conducted on October 1, 2010, a TCEQ San Angelo Regional Office investigator documented that Respondent:

   a. Failed to maintain records as a scrap tire transporter using a manifest system and to retain copies of manifests, work orders and invoices for a period of at least three years;

   b. Failed to submit annual reports to the Executive Director regarding transport of scrap tires each calendar year. Specifically, Respondent's Registration was approved on November 8, 2007, and no annual reports of scrap tire transport activities were submitted for calendar years 2007, 2008, and 2009; and

   c. Failed to prevent the unauthorized disposal of MSW. Specifically, Respondent disposed of greater than 1,500 scrap tires (approximately 150 cu. yds.) at the Site.

3. Respondent received notice of the violations on or about November 23, 2010.

4. 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 Lonnie Bearden, Sr. d/b/a The Tireman," (the "EDPRP") in the TCEQ Chief Clerk's office on March 29, 2011.

5. By letter dated March 29, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.

6. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent 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. 2.a., Respondent failed to maintain records as a scrap tire transporter using a manifest system and to retain copies of manifests, work orders and invoices for a period of at least three years, in violation of 30 TEX. ADMIN. CODE § 328.57(c) and (d).

3. As evidenced by Finding of Fact No. 2.b, Respondent failed to submit annual reports to the Executive Director regarding transport of scrap tires each calendar year, in violaton of 30 TEX. ADMIN. CODE § 328.57(e).

4. As evidenced by Finding of Fact No. 2.c, Respondent failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(a) and (c).

5. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 30 TEX. ADMIN. CODE § 70.104(c)(2).

6. As evidenced by Finding of Fact No. 6, Respondent 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 Respondent and assess the penalty recommended by the Executive Director.

7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

8. An administrative penalty in the amount of thirteen thousand four hundred forty dollars ($13,440.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

9. 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.

10. Pursuant to 30 TEX. ADMIN. CODE §§ 328.54(a) and 328.55, the Commission has authority to revoke Respondent's Registration if the Commission finds that good cause exists.

11. Good cause for revocation of Respondent's Registration exists as justified by Findings of Fact Nos. 2 and 4 through 6, and Conclusions of Law Nos. 2 through 6.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of thirteen thousand four hundred forty dollars ($13,440.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent'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.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Lonnie Bearden, Sr. d/b/a The Tireman; Docket No. 2010-1935-MLM-E" to:

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

3. Respondent's Registration is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new tire transporter registration after a period of at least one year from the effective date of this Order, in accordance with 30 TEX. ADMIN. CODE § 328.55(6)(c).

4. Within 10 days after the effective date of this Order, Respondent shall send his Registration certificate to:

   Tire Transporter Authorization Team, MC 138
   Texas Commission on Environmental Quality
   P.O. Box 13087
   Austin, Texas 78711-3087

5. Respondent shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Order, Respondent shall cease disposing of any additional scrap tires at the Site.

   b. Within 30 days after the effective date of this Order, Respondent shall:

      i. Remove all scrap tires from the Site and dispose of them at an authorized facility; and

      ii. Submit scrap tire transporting activity reports for calendar years 2007, 2008, and 2009, in accordance with 30 TEX. ADMIN. CODE § 328.57 to:

      Tire Program Liaison
      Field Operations Support Division, MC 174
      Texas Commission on Environmental Quality
      P.O. Box 13087
      Austin, Texas 78711-3087

   c. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 5.a. and 5.b. The certification shall be notarized by a State of Texas Notary Public and shall 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."

   Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

   and:

      Christopher Mayben, Waste Section Manager
      Texas Commission on Environmental Quality
      San Angelo Regional Office
      622 S. Oakes, Ste. K
      San Angelo, TX 76903-7035

6. All relief not expressly granted in this Order is denied.

7. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.

8. If Respondent 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

9. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

10. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

11. 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.

12. 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

AFFIDAVIT OF JEFFREY J. HUHN

STATE OF TEXAS §
§
COUNTY OF BEXAR §

"My name is Jeffrey J. Huhn. 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 Lonnie Bearden, Sr. d/b/a The Tireman," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on March 29, 2011.

The EDPRP was mailed to Respondent's last known address on March 29, 2011 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

Jeffrey J. Huhn, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jeffrey J. Huhn, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 9th day of May, A.D. 2011.

Carmen Garcia 5/8/11
Notary Signature

CARMEN S. GARCIA
Notary Public
STATE OF TEXAS
Commission Exp. 01-29-2014
Notary without Bond