

Executive Summary – Enforcement Matter – Case No. 41216  
TIRETEX, Inc. and Jerry Waller  
RN103043329  
Docket No. 2011-0307-MSW-E

**Order Type:**

Default Order

**Findings Order Justification:**

N/A

**Media:**

MSW

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

305 West Simonds Road, Seagoville, Dallas County

**Type of Operation:**

used tire wholesale facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: None

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

**Texas Register Publication Date:** October 14, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$43,260

**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:** \$43,260

**Compliance History Classifications:**

Person/CN – Average (Both Respondents)

Site/RN – Average

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** May 7, 2010; November 2, 2010  
**Complaint Information:** Alleged that the facility is storing large amounts of scrap tires and tire pieces on-site, which are creating a fire hazard and nuisance mosquito conditions.

**Date(s) of Investigation:** May 26, 2010; November 19, 2010

**Date(s) of NOV(s):** July 28, 2010

**Date(s) of NOE(s):** February 11, 2011

***Violation Information***

1. Failed to obtain prior authorization for the storage of scrap tires and scrap tire pieces (approx. 24,000 scrap tires/scrap tire pieces) [30 TEX. ADMIN. CODE § 328.63(b), (b)(1) and (b)(2)].
2. Failed to comply with local codes and ordinances [30 TEX. ADMIN. CODE § 328.52(a)].
3. Failed to sort, mark, classify and arrange in an organized manner good used tires for sale to consumers [30 TEX. ADMIN. CODE § 328.56(d)(3)].
4. Failed to record on manifests the end location of whole used tires removed from a delivered load [30 TEX. ADMIN. CODE § 328.58(b)].
5. Failed to monitor for vector control and apply vector control measures when needed, but in no event less than once every two weeks [30 TEX. ADMIN. CODE § 328.63(d)(3)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**  
N/A

**Technical Requirements:**

1. Immediately:
  - a. Cease any additional unauthorized storage and disposal of MSW, including but not limited to scrap tires and scrap tire pieces; and
  - b. Begin application of vector control measures.
2. Within 30 days:
  - a. Sort, mark, classify and arrange in an organized manner all good used tires for sale to the consumer;
  - b. Develop and implement procedures to ensure compliance with all applicable codes and local ordinances; and
  - c. Develop and implement procedures to ensure manifests are accurately completed and maintained.
3. Within 60 days, remove all MSW, including used or scrap tires and tire pieces, in excess of the authorized limit (2,500 scrap tires/pieces) and dispose of it at an authorized facility.
4. Within 75 days, submit written certification to demonstrate compliance.

**Executive Summary – Enforcement Matter – Case No. 41216  
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RN103043329  
Docket No. 2011-0307-MSW-E**

***Litigation Information***

**Date Petition(s) Filed:** July 26, 2011  
**Date(s) Green Card(s) Signed:** July 28, 2011  
**Date(s) Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A

***Contact Information***

**TCEQ Attorneys:** Jim Sallans, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ Enforcement Coordinator:** Philip Aldridge, Waste Enforcement Section, (512) 239-0855

**TCEQ Regional Contact:** Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5903

**Respondent:** Jerry Waller, President, TIRETEX, Inc., 305 West Simonds Road, Seagoville, Texas 75159

**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	14-Feb-2011	<b>Screening</b>	21-Feb-2011	<b>EPA Due</b>	
	<b>PCW</b>	26-Jul-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	TIRETEX, INC. and Jerry Waller		
<b>Reg. Ent. Ref. No.</b>	RN103043329		
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	41216	<b>No. of Violations</b>	5
<b>Docket No.</b>	2011-0307-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>	Waste Tires	<b>Enf. Coordinator</b>	Philip Aldridge
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$41,200
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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>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$2,060
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<b>Notes</b>	Enhancement for one previous NOV with same/similar violations.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondents do 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	\$4,084	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$85,972	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$43,260
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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>	\$43,260
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$43,260
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$43,260
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**Screening Date** 21-Feb-2011

**Docket No.** 2011-0307-MSW-E

**PCW**

**Respondent** TIRETEX, INC. and Jerry Waller

Policy Revision 2 (September 2002)

**Case ID No.** 41216

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN103043329

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Philip Aldridge

### 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 ( <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**

Enhancement for one previous NOV with same/similar violations.

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

Screening Date 21-Feb-2011

Docket No. 2011-0307-MSW-E

PCW

Respondent TIRETEX, INC. and Jerry Waller

Policy Revision 2 (September 2002)

Case ID No. 41216

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103043329

Media [Statute] Municipal Solid Waste

Enf. Coordinator Philip Aldridge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 328.63(b), (b)(1), and (b)(2)

Violation Description Failed to obtain prior authorization for the storage of scrap tires and scrap tire pieces. Specifically, an estimated 9,496 cubic yards of scrap tires and scrap tire pieces were stored at the Facility.

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	Harm			Percent
		Major	Moderate	Minor	
		x			25%
100% of the rule requirement was not met.					

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 4 94 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$10,000

Four monthly events are recommended from the November 19, 2010 investigation date to the February 21, 2011 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 Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$10,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4,037

Violation Final Penalty Total \$10,500

This violation Final Assessed Penalty (adjusted for limits) \$10,500

## Economic Benefit Worksheet

**Respondent** TIRETEX, INC. and Jerry Waller  
**Case ID No.** 41216  
**Req. Ent. Reference No.** RN103043329  
**Media** Municipal Solid Waste  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$84,922	19-Nov-2010	1-Nov-2011	0.95	\$4,037	n/a	\$4,037
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly dispose of scrap tires and scrap tire pieces at a registered facility. 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				0.00	\$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

\$84,922

**TOTAL**

\$4,037

Screening Date 21-Feb-2011

Docket No. 2011-0307-MSW-E

PCW

Respondent TIRETEX, INC. and Jerry Waller

Policy Revision 2 (September 2002)

Case ID No. 41216

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103043329

Media [Statute] Municipal Solid Waste

Enf. Coordinator Phillip Aldridge

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 328.52(a)

Violation Description Failed to comply with local codes and ordinances. Specifically, the Respondents did not maintain the tire piles and property access in accordance with the City of Seagoville Fire Codes, sections 1103 and 902.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				50%
	Potential	x			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 4 94 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$20,000

Four monthly events are recommended from the November 19, 2010 investigation date to the February 21, 2011 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 Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$20,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$21,000

This violation Final Assessed Penalty (adjusted for limits) \$21,000

## Economic Benefit Worksheet

**Respondent** TIRETEX, INC. and Jerry Waller  
**Case ID No.** 41216  
**Req. Ent. Reference No.** RN103043329  
**Media** Municipal Solid Waste  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				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

Economic benefit included in violation no. 1.

### 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

\$0

TOTAL

\$0

Screening Date 21-Feb-2011

Docket No. 2011-0307-MSW-E

PCW

Respondent TIRETEX, INC. and Jerry Waller

Policy Revision 2 (September 2002)

Case ID No. 41216

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103043329

Media [Statute] Municipal Solid Waste

Enf. Coordinator Phillip Aldridge

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 328.56(d)(3)

Violation Description Failed to sort, mark, classify, and arrange in an organized manner good used tires for sale to consumers.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (25%).

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 4 94 Number of violation days

Table for event frequency: daily, weekly, monthly (x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$10,000

Four monthly events are recommended from the November 19, 2010 investigation date to the February 21, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (x), (mark with x).

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$10,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$24

Violation Final Penalty Total \$10,500

This violation Final Assessed Penalty (adjusted for limits) \$10,500

## Economic Benefit Worksheet

**Respondent** TIRETEX, INC. and Jerry Waller  
**Case ID No.** 41216  
**Req. Ent. Reference No.** RN103043329  
**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
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	19-Nov-2010	1-Nov-2011	0.95	\$24	n/a	\$24

Notes for DELAYED costs

Estimated cost to sort, mark, classify, and arrange good used tires for sale to the consumer. 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$24

Screening Date 21-Feb-2011

Docket No. 2011-0307-MSW-E

PCW

Respondent TIRETEX, INC. and Jerry Waller

Policy Revision 2 (September 2002)

Case ID No. 41216

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103043329

Media [Statute] Municipal Solid Waste

Enf. Coordinator Phillip Aldridge

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 328.58(b)

Violation Description Failed to record on the manifest the end location of whole used tires removed from a delivered load. Specifically, manifest nos. 4975 and 4921 did not identify the end location of 760 whole scrap tires extracted for use as good used tires.

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	Harm			Percent
		Major	Moderate	Minor	
				x	1%
Less than 30% of the rule requirement was not met.					

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 2 94 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$200

Two single events are recommended (one for each manifest).

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 Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$200

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$210

This violation Final Assessed Penalty (adjusted for limits) \$210

## Economic Benefit Worksheet

**Respondent** TIRETEX, INC. and Jerry Waller  
**Case ID No.** 41216  
**Req. Ent. Reference No.** RN103043329  
**Media** Municipal Solid Waste  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$50	11-Nov-2010	19-Nov-2010	0.02	\$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

Estimated cost to completely fill out manifests (\$25 per occurrence). The Date Required is the manifest date and the Final Date is the investigation date.

### 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

\$50

TOTAL

\$0

Screening Date 21-Feb-2011

Docket No. 2011-0307-MSW-E

PCW

Respondent TIRETEX, INC. and Jerry Waller

Policy Revision 2 (September 2002)

Case ID No. 41216

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103043329

Media [Statute] Municipal Solid Waste

Enf. Coordinator Phillip Aldridge

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 328.63(d)(3)

Violation Description Failed to monitor for vector control and apply appropriate vector control measures when needed, but in no event less than once every two weeks. Specifically, scrap tires were observed holding stagnant water.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (10%).

>> Programmatic Matrix

Table with columns: 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 \$9,000

\$1,000

Violation Events

Number of Violation Events 1 94 Number of violation days

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

Notes The Respondents do not meet good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$24

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

## Economic Benefit Worksheet

**Respondent** TIRETEX, INC. and Jerry Waller  
**Case ID No.** 41216  
**Req. Ent. Reference No.** RN103043329  
**Media** Municipal Solid Waste  
**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	19-Nov-2010	1-Nov-2011	0.95	\$24	n/a	\$24

Notes for DELAYED costs

Estimated cost to establish a vector control program. 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$24

## Compliance History

Customer/Respondent/Owner Operator: CN603386426 TIRETEX, INC. Classification: AVERAGE Rating: 5.00  
 Regulated Entity: RN103043329 TIRETEX INC Classification: AVERAGE Site Rating: 11.00  
 ID Number(s): TIRES REGISTRATION 6026486  
 MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 17176

Location: 305 W SIMONDS RD, SEAGOVILLE, TX, 75159  
 TCEQ Region: REGION 04 DFW METROPLEX  
 Date Compliance History Prepared: February 21, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 21, 2006 to February 21, 2011

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

Name: Philip Aldridge

Phone: (512) 239 0855

### 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.)  
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

**Date: 07/28/2010 (800486) CN603386426**

Self Report? No Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.63(b)  
 30 TAC Chapter 328, SubChapter F 328.63(b)(1)  
 30 TAC Chapter 328, SubChapter F 328.63(b)(2)

Description: Entity storing more than 500 used or scrap tires on the ground and failed to register as a scrap tire storage site.

Self Report? No Classification: Major

Citation: 30 TAC Chapter 328, SubChapter F 328.63(d)(1)

Description: Failure to comply with local codes and ordinances.

Self Report? No Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.56(d)(3)

Description: Failure to sort, mark, classify, and arrange in an organize manner good used tires for sale to the consumer.

- 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

## Compliance History

Customer/Respondent/Owner Operator: CN601580319 Jerry Waller Classification: AVERAGE Rating: 5.00  
 Regulated Entity: RN103043329 TIRETEX INC Classification: AVERAGE Site Rating: 11.00  
 ID Number(s): TIRES REGISTRATION 6026486  
 MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 17176  
 Location: 305 W SIMONDS RD, SEAGOVILLE, TX, 75159  
 TCEQ Region: REGION 04 DFW METROPLEX  
 Date Compliance History Prepared: February 21, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 21, 2006 to February 21, 2011

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

Name: Philip Aldridge

Phone: (512) 239 0855

### 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.)  
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

**Date: 07/28/2010 (800486) CN603386426**

Self Report? No Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.63(b)  
 30 TAC Chapter 328, SubChapter F 328.63(b)(1)  
 30 TAC Chapter 328, SubChapter F 328.63(b)(2)

Description: Entity storing more than 500 used or scrap tires on the ground and failed to register as a scrap tire storage site.

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Description: Failure to comply with local codes and ordinances.

Self Report? No Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.56(d)(3)

Description: Failure to sort, mark, classify, and arrange in an organize manner good used tires for sale to the consumer.

- 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  
TIRETEX, INC. AND  
JERRY WALLER;  
RN103043329**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2011-0307-MSW-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 and corrective action of the respondents. The respondents made the subject of this Order are TIRETEX, INC. and Jerry Waller ("Respondents").

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

### **FINDINGS OF FACT**

1. TIRETEX, INC. and Jerry Waller (President of TIRETEX, INC.) own and operate a used tire wholesale facility located at 305 West Simonds Road, in Seagoville, Dallas, County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal solid waste ("MSW") and scrap tires as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on November 19, 2010, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondents:
  - a. Failed to obtain prior authorization for the storage of scrap tires and scrap tire pieces. Specifically, an estimated 24,000 (approximately 9,496 cubic yards) of scrap tires/scrap tire pieces were stored at the Facility, which is authorized by the TCEQ to store no more than 2,500 tires or the equivalent in tire pieces;
  - b. Failed to comply with local codes and ordinances. Specifically, Respondents did not maintain the tire piles and property access at the Facility in accordance with City of Seagoville Fire Codes §§ 902 and 1103;
  - c. Failed to sort, mark, classify and arrange in an organized manner good used tires for sale to consumers;
  - d. Failed to record on manifests the end location of whole used tires removed from a delivered load. Specifically, manifest numbers 4975 and 4921 did not identify the end location of 760 whole scrap tires extracted for use as good used tires; and

- e. Failed to monitor for vector control and apply vector control measures when needed, but in no event less than once every two weeks. Specifically, scrap tires at the Facility were observed holding stagnant water.
3. Respondents received notice of the violations on or about February 16, 2011.
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 TIRETEX, INC. and Jerry Waller" (the "EDPRP") in the TCEQ Chief Clerk's office on July 26, 2011.
5. By letter dated July 26, 2011, sent to each Respondents' last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondents with notice of the EDPRP. According to the return receipt "green card," Respondents received notice of the EDPRP on July 28, 2011, as evidenced by the signature on the card.<sup>1</sup>
6. More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondents are 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., Respondents failed to obtain prior authorization for the storage of scrap tires and scrap tire pieces, in violation of 30 TEX. ADMIN. CODE § 328.63(b), (b)(1) and (b)(2).
3. As evidenced by Finding of Fact No. 2.b., Respondents failed to comply with local codes and ordinances, in violation of 30 TEX. ADMIN. CODE § 328.52(a).
4. As evidenced by Finding of Fact No. 2.c., Respondents failed to sort, mark, classify and arrange in an organized manner good used tires for sale to consumers, in violation of 30 TEX. ADMIN. CODE § 328.56(d)(3).
5. As evidenced by Finding of Fact No. 2.d., Respondents failed to record on manifests the end location of whole used tires removed from a delivered load, in violation of 30 TEX. ADMIN. CODE § 328.58(b).
6. As evidenced by Finding of Fact No. 2.e., Respondents failed to monitor for vector control and apply vector control measures when needed, but in no event less than once every two weeks, in violation of 30 TEX. ADMIN. CODE § 328.63(d)(3).

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<sup>1</sup> Jerry Waller is the President and Director of TIRETEX, Inc., thus, both Respondents were served at the same address.

7. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondents with proper notice of the EDRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
8. As evidenced by Finding of Fact No. 6, Respondents 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 Respondents and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.51, the Commission has the authority to assess an administrative penalty against Respondents 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.
10. An administrative penalty in the amount of forty-three thousand two hundred sixty dollars (\$43,260.00) 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. Respondents are assessed an administrative penalty in the amount of forty-three thousand two hundred sixty dollars (\$43,260.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' 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: TIRETEX, INC. and Jerry Waller; Docket No. 2011-0307-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. Respondents shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Order, Respondents shall:
  - i. Cease any additional unauthorized storage and disposal of MSW, including but not limited to scrap tires and scrap tire pieces; and
  - ii. Begin application of vector control measures, in accordance with 30 TEX. ADMIN. CODE § 328.63 (Conclusions of Law No. 6).
- b. Within 30 days after the effective date of this Order, Respondents shall:
  - i. Sort, mark, classify and arrange in an organized manner all good used tires for sale to the consumer, in accordance with 30 TEX. ADMIN. CODE § 328.56 (Conclusions of Law No. 4);
  - ii. Develop and implement procedures to ensure compliance with all applicable codes and local ordinances, in accordance with 30 TEX. ADMIN. CODE § 328.52 (Conclusions of Law No. 3);
  - iii. Develop and implement procedures to ensure manifests are accurately completed and maintained, in accordance with 30 TEX. ADMIN. CODE § 328.58 (Conclusions of Law No. 5).
- c. Within 60 days after the effective date of this Order, Respondents shall remove all MSW, including used or scrap tires and tire pieces, in excess of the authorized limit for TCEQ scrap tire Registration ID No. 6026486, and dispose of it at an authorized facility (Conclusions of Law No. 2); and
- d. Within 75 days of the effective date of this Order, Respondents shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.e., below, to demonstrate compliance with Ordering Provisions Nos. 3.a. through 3.c.
- e. The certification required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, 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."

Respondents shall submit the written certification and supporting 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:

Sam Barrett, Waste Section Manager  
Texas Commission on Environmental Quality  
Dallas/Fort Worth Regional Office  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If Respondents fail 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, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. 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 Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
9. 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.
10. 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

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For the Commission

**AFFIDAVIT OF JIM SALLANS**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

"My name is Jim Sallans. 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 TIRETEX, INC. and Jerry Waller" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 26, 2011.

The EDPRP was mailed to Respondents' last known address on July 26, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondents received notice of the EDPRP on July 28, 2011, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing."



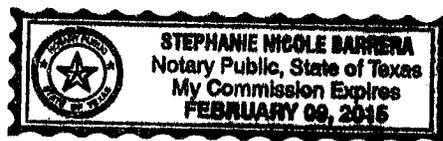
\_\_\_\_\_  
Jim Sallans, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, 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 27 day of September, A.D. 2011.



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



Notary without Bond