

Executive Summary – Enforcement Matter – Case No. 33719  
Robert Choate DBA Pop's Tire Shop  
RN103073383  
Docket No. 2010-1268-MSW-E

**Order Type:**  
Default Order

**Findings Order Justification:**  
N/A

**Media:**  
MSW

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
1949 Woodworth Blvd., Port Arthur, Jefferson County

**Type of Operation:**  
Retail tire shop

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	\$3,799.14 (2007-0867-MSW-E)
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** April 1, 2011

**Comments Received:** None

***Penalty Information***

<b>Total Penalty Assessed:</b>	\$31,250
<b>Amount Deferred for Expedited Settlement:</b>	N/A
<b>Amount Deferred for Financial Inability to Pay:</b>	N/A
<b>Total Paid to General Revenue:</b>	\$0
<b>Total Due to General Revenue:</b>	\$31,250
<b>SEP Conditional Offset:</b>	N/A

**Compliance History Classifications:**

Person/CN – Average  
Site/RN – Average

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
Complaint Information: N/A  
**Date(s) of Investigation:** July 13, 2010  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** July 22, 2010

***Violation Information***

Failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground [30 TEX. ADMIN. CODE §§ 328.56(d)(2) and 328.60(a) and TCEQ Agreed Order Docket No. 2007-0867-MSW-E, Ordering Provision 2.a].

***Corrective Actions/Technical Requirements***

**Corrective Actions Taken:**

N/A

**Technical Requirements:**

1. Immediately, cease accepting scrap tires at the Facility until the required TCEQ registration is obtained.
2. Within 30 days, obtain a scrap tire registration or reduce the number of tires being stored at the Facility to either 500 or fewer on the ground or 2,000 or fewer in enclosed and lockable containers.
3. Within 45 days, submit written certification to demonstrate compliance.

***Litigation Information***

**Date Petition(s) Filed:** December 15, 2010  
**Date(s) Green Card(s) Signed:** December 17, 2010  
**Date(s) Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):**  
Preliminary hearing: N/A  
Evidentiary hearing: N/A

***Contact Information***

**TCEQ Attorneys:** Tammy L. Mitchell, Litigation Division, MC 175, (512) 239-3400  
Lena Roberts, Litigation Division, MC 175, (512) 239-3400  
**TCEQ SEP Coordinator:** N/A  
**TCEQ Enforcement Coordinator:** Danielle Porras, Water Enforcement Section, (713) 767-3682  
**TCEQ Regional Contact:** Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838  
**Respondent:** Robert Choate, 1949 Woodworth Blvd., Port Arthur, Texas 77640  
**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	26-Jul-2010	<b>Screening</b>	4-Aug-2010	<b>EPA Due</b>	
	<b>PCW</b>	5-Nov-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Robert Choate dba Pop's Tire Shop		
<b>Reg. Ent. Ref. No.</b>	RN103073383		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	33719	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-1268-MSW-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Danielle Porras
		<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>	\$25,000
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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>	25.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$6,250
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Notes: Enhancement for one TCEQ Agreed Order with denial and one Notice of Violation with same/similar violations.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$1,488  
 Approx. Cost of Compliance: \$10,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$31,250
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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.

Notes:

<b>Final Penalty Amount</b>	\$31,250
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$31,250
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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.)

Notes: No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$31,250
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Screening Date 4-Aug-2010

Docket No. 2010-1268-MSW-E

PCW

Respondent Robert Choate dba Pop's Tire Shop

Policy Revision 2 (September 2002)

Case ID No. 33719

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103073383

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

### 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> )	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)** 25%

#### >> 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 TCEQ Agreed Order with denial and one Notice of Violation with same/similar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 25%

Screening Date 4-Aug-2010

Docket No. 2010-1268-MSW-E

PCW

Respondent Robert Choate dba Pop's Tire Shop

Policy Revision 2 (September 2002)

Case ID No. 33719

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103073383

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 328.56(d)(2), 328.60(a) and TCEQ Agreed Order Docket No. 2007-0867-MSW-E, Ordering Provision 2.a.

Violation Description Failed to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground. Specifically, approximately 2,400 scrap tires 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%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 10 Number of violation days 842

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$25,000

Ten quarterly events are recommended from the April 14, 2008 effective date of the Agreed Order to the August 4, 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 w th x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$25,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,488

Violation Final Penalty Total \$31,250

This violation Final Assessed Penalty (adjusted for limits) \$31,250

## Economic Benefit Worksheet

**Respondent** Robert Choate dba Pop's Tire Shop  
**Case ID No.** 33719  
**Req. Ent. Reference No.** RN103073383  
**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	\$10,000	14-Apr-2008	5-Apr-2011	2.98	\$1,488	n/a	\$1,488
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to register the Facility as a scrap tire storage facility. The Date Required is the effective date of the Agreed Order 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

\$10,000

**TOTAL**

\$1,488

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602632416 Choate, Robert Classification: Average Rating: 25.50  
Regulated Entity: RN103073383 Pop's Tire Shop Classification: Average Site Rating: 25.50  
ID Number(s): TIRES REGISTRATION 26972  
Location: 1949 WOODWORTH BLVD, PORT ARTHUR, TX, 77640  
TCEQ Region: REGION 10 - BEAUMONT  
Date Compliance History Prepared: August 05, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 05, 2005 to August 05, 2010

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

Name: Danielle Porras Phone: (713) 767-3682

## 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 judgments, and consent decrees of the State of Texas and the federal government.  
Effective Date: 04/14/2008 ADMINORDER 2007-0867-MSW-E  
Classification: Moderate  
Citation: 30 TAC Chapter 328, SubChapter F 328.56(d)(2)  
30 TAC Chapter 328, SubChapter F 328.60(a)  
5B THSC Chapter 361, SubChapter A 361.112(a)  
Description: Failure to obtain a scrap tire storage registration for storing more than 500 scrap or used tires on the ground.
- 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 05/08/2007 (542399)  
2 07/22/2010 (841356)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 08/23/2005 (398809) CN602632416  
Self NO Classification: Moderate  
Report?  
Citation: 30 TAC Chapter 328, SubChapter F 328.56(d)(2)  
30 TAC Chapter 328, SubChapter F 328.60(a)  
5B THSC Chapter 361, SubChapter A 361.112(a)  
Description: Failure to obtain a scrap tire storage registration for storing more than 500 scrap or used tires on the ground.  
Self NO Classification: Moderate  
Report?  
Citation: 30 TAC Chapter 328, SubChapter F 328.63  
Description: Failure to comply with scrap tire facility requirements.
- 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  
ROBERT CHOATE DBA POP'S  
TIRE SHOP;  
RN103073383**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2010-1268-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 respondent. The respondent made the subject of this Order is Robert Choate DBA Pop's Tire Shop ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a retail tire shop located at 1949 Woodworth Blvd. in Port Arthur, Jefferson County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During a record review conducted on July 13, 2010, a TCEQ Beaumont Regional Office investigator documented that Respondent failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground. Specifically, approximately 2,400 scrap tires were stored on the ground at the Facility.
3. Respondent received notice of the violation on or about July 27, 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 Robert Choate DBA Pop's Tire Shop," (the "EDPRP") in the TCEQ Chief Clerk's office on December 15, 2010.
5. By letter dated December 15, 2010, 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. According to the return receipt "green card," Respondent received notice of the EDPRP on December 17, 2010, as evidenced by the signature on the card.

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, Respondent failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground, in violation of 30 TEX. ADMIN. CODE §§ 328.56(d)(2) and 328.60(a) and TCEQ Agreed Order Docket No. 2007-0867-MSW-E, Ordering Provision 2.a.
3. 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 and 30 TEX. ADMIN. CODE § 70.104(a).
4. 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.
5. 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.
6. An administrative penalty in the amount of thirty-one thousand two hundred fifty dollars (\$31,250.00) 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. Respondent is assessed an administrative penalty in the amount of thirty-one thousand two hundred fifty dollars (\$31,250.00) 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: Robert Choate DBA Pop's Tire Shop; Docket No. 2010-1268-MSW-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 shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Respondent shall cease accepting scrap tires at the Facility until the required TCEQ registration is obtained, in accordance with 30 TEX. ADMIN. CODE §§ 328.56 and 328.60.
  - b. Within 30 days after the effective date of this Order, Respondent shall obtain a scrap tire registration or reduce the number of tires being stored at the Facility to either 500 or fewer on the ground or 2,000 or fewer in enclosed and lockable containers, in accordance with 30 TEX. ADMIN. CODE §§ 328.56 and 328.60.
  - 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. 3.a. and 3.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:

Derek Eades, Waste Section Manager  
Texas Commission on Environmental Quality  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

4. All relief not expressly granted in this Order is denied.
5. 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 Facility operations referenced in this Order.
6. 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.
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 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.
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 Respondent if the Executive Director determines that Respondent has 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 TAMMY L. MITCHELL**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

"My name is Tammy L. Mitchell. 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 Robert Choate DBA Pop's Tire Shop,' (the 'EDPRP') was filed in the TCEQ Chief Clerk's office on December 15, 2010.

The EDPRP was mailed to Respondent's last known address on December 15, 2010 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 December 17, 2010, as evidenced by the signature on the card.

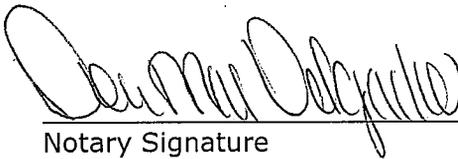
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Tammy L. Mitchell, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tammy L. Mitchell, 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 18<sup>th</sup> day of May, A.D. 2011.



Notary Signature

