

Executive Summary – Enforcement Matter – Case No. 39489 Page
SANTOS BARCENAS D/B/A TYRE KING RECYCLING
RN102954625
Docket No. 2010-0575-MSW-E

1 of 2

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
MSW

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
1100 East 34th Street, Plainview, Hale County

Type of Operation:
scrap tire recycling facility

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: February 11, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed:	\$13,200
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:	\$13,200
SEP Conditional Offset:	N/A

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. 39489
SANTOS BARCENAS D/B/A TYRE KING RECYCLING
RN102954625**

Docket No. 2010-0575-MSW-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: February 12, 2010
Date(s) of NOV(s): August 3, 2009
Date(s) of NOE(s): March 12, 2010

Violation Information

Failed to prevent the on-site storage of more scrap tires than indicated on the Facility's TCEQ Scrap Tire Management ("STM") Registration [30 TEX. ADMIN. CODE § 328.55(1)(D) and STM Registration No. 6027064].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. Immediately, cease the storage of any additional scrap tires on the ground at the Facility.
2. Within 30 days:
 - a. Remove all unauthorized scrap tires from the Facility and dispose of them at an authorized facility; and
 - b. Begin storing all tires, including but not limited to scrap tires, in accordance with STM Registration No. 6027064.
3. Within 45 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: December 22, 2010
Date(s) Green Card(s) Signed: December 24, 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: Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Wallace Myers, Waste Enforcement Section, (512) 239-6580

TCEQ Regional Contact: Patrick Cooke, Lubbock Regional Office, MC R-2, (806) 796-7092

Respondent: Santos Barcenas, 1100 East 34th Street, Plainview, Texas 79072

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	22-Mar-2010	Screening	23-Mar-2010	EPA Due	
	PCW	27-Jan-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Santos Barcenas dba Tyre King Recycling
Reg. Ent. Ref. No.	RN102954625
Facility/Site Region	2-Lubbock
Major/Minor Source	Major

CASE INFORMATION				
Enf./Case ID No.	39489	No. of Violations	1	
Docket No.	2010-0575-MSW-E	Order Type	Findings	
Media Program(s)	Waste Tires	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Wallace Myers	
		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	\$10,000
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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.

Compliance History	32.0% Enhancement	Subtotals 2, 3, & 7	\$3,200
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Notes	Enhancement for one NOV with same or similar violations, one NOV with dissimilar violations, and one Default Order.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$860	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$20,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$13,200
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$13,200
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$13,200
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DEFERRAL	0.0%	Reduction	Adjustment	\$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.
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PAYABLE PENALTY	\$13,200
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Screening Date 23-Mar-2010

Docket No. 2010-0575-MSW-E

PCW

Respondent Santos Barcenas dba Tyre King Recycling

Policy Revision 2 (September 2002)

Case ID No. 39489

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102954625

Media [Statute] Waste Tires

Enf. Coordinator Wallace Myers

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	1	2%
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	1	25%
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) 32%

>> 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, one NOV with dissimilar violations, and one Default Order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 32%

Screening Date	23-Mar-2010	Docket No.	2010-0575-MSW-E	PCW
Respondent	Santos Barcenas dba Tyre King Recycling			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39489			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102954625			
Media [Statute]	Waste Tires			
Enf. Coordinator	Wallace Myers			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 328.55(1)(D) and Scrap Tire Management Registration No. 6027064			
Violation Description	Failed to prevent the on-site storage of more scrap tires than indicated on the Facility's TCEQ Scrap Tire Management ("STM") Registration. Specifically, the Respondent stored over 10,000 scrap tires on the ground at the Facility while the STM Registration only authorized the storage of no more than 2,000 scrap tires in enclosed buildings or trailers at the Facility.			
		Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%

Matrix Notes
Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$10,000

Two monthly events are recommended based on documentation of the violation during the February 12, 2010 investigation to the March 23, 2010 screening date.

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes
The Respondent does 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 **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Santos Barcenas dba Tyre King Recycling
Case ID No. 39489
Reg. Ent. Reference No. RN102954625
Media Waste Tires
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	\$20,000	12-Feb-2010	23-Dec-2010	0.86	\$860	n/a	\$860
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to remove and properly dispose of all scrap tires (at \$2.00 per tire) in excess of authorized limits (approximately 10,000 scrap tires). 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	\$20,000	TOTAL	\$860
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Compliance History Report

Customer/Respondent/Owner-Operator: CN601500986 Santos Barcenas dba Tyre King Recycling Classification: AVERAGE Rating: 0.86
Regulated Entity: RN102954625 Tyre King Recycling Classification: AVERAGE Site Rating: 0.86
ID Number(s): TIRES REGISTRATION 6027064
Location: 1100 E 34TH ST, PLAINVIEW, TX, 79072
TCEQ Region: REGION 02 - LUBBOCK
Date Compliance History Prepared: March 23, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 23, 2005 to March 23, 2010

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

Name: Wallace Myers Phone: (512) 239-6580

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 N/A
5. When did the change(s) in owner or operator occur?
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 03/14/2010

ADMINORDER 2009-0812-MSW-E

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)(1)

Description: Failure to transport scrap tires to an authorized disposal or recycling facility.

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

N/A

- C. Chronic excessive emissions events.

N/A

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

1	01/26/2006	(451629)
2	01/26/2006	(451651)
3	11/17/2006	(531236)
4	05/15/2009	(745671)
5	08/03/2009	(761407)
6	08/03/2009	(761436)
7	10/02/2009	(775802)
8	10/05/2009	(775792)
9	03/15/2010	(787716)

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

Date: 08/03/2009 (761436) CN601500986

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.55(1)(D)

Description: Failure of owner to prevent the storage on-site of more tires than were listed on the registration application.

Date: 08/03/2009 (761407) CN601500986

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.58(b)

Description: Failure of the owner/tire transporter to complete required information on the Whole Used or Scrap Tire Manifest forms.

- 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
SANTOS BARCENAS D/B/A
TYRE KING RECYCLING;
RN102954625**

**§
§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-0575-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 Santos Barcenas d/b/a Tyre King Recycling ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a scrap tire recycling facility at 1100 East 34th Street in Plainview, Hale 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 an investigation conducted on February 12, 2010, a TCEQ Lubbock Regional Office investigator documented that Respondent failed to prevent the on-site storage of more scrap tires than indicated on the Facility's TCEQ Scrap Tire Management ("STM") Registration. Specifically, the STM Registration authorizes the storage of no more than 2,000 scrap tires in enclosed buildings or trailers at the Facility, however, there were approximately 10,000 scrap tires stored on the ground at the Facility.
3. Respondent received notice of the violation on or about March 17, 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 Santos Barcenas d/b/a Tyre King Recycling" (the "EDPRP") in the TCEQ Chief Clerk's office on December 22, 2010.
5. By letter dated December 22, 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 24, 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 prevent the on-site storage of more scrap tires than indicated on the Facility's TCEQ STM Registration, in violation of 30 TEX. ADMIN. CODE § 328.55(1)(D) and STM Registration No. 6027064.
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 thirteen thousand two hundred dollars (\$13,200.00) 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 thirteen thousand two hundred dollars (\$13,200.00) 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: Santos Barcenas d/b/a Tyre King Recycling; Docket No. 2010-0575-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 the storage of any additional scrap tires on the ground at the Facility;
 - b. Within 30 days after the effective date of this Order, Respondent shall:
 - i. Remove all unauthorized scrap tires from the Facility and dispose of them at an authorized facility; and
 - ii. Begin storing all tires, including but not limited to scrap tires, in accordance with STM Registration No. 6027064.
 - c. Within 45 days after the effective date of this Order, Respondent shall submit written certification as described below, and include 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 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Patrick Cooke, Waste Section Manager
Lubbock Regional Office
Texas Commission on Environmental Quality
5012 50th Street, Suite 100
Lubbock, Texas 79414-3421

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

For the Commission

AFFIDAVIT OF GARY K. SHIU

STATE OF TEXAS

§

COUNTY OF HARRIS

§

§

"My name is Gary K. Shiu. 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 Santos Barcenas d/b/a Tyre King Recycling," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 22, 2010.

The EDPRP was mailed to Respondent's last known address on December 22, 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 24, 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."

Gary K. Shiu, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Gary K. Shiu, 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 ____ day of _____, A.D. 2011.

Notary Signature