

Executive Summary – Enforcement Matter – Case No. 40330  
Robert Keller d/b/a Robert Keller Tire Service  
RN105896237  
Docket No. 2010-1441-MSW-E

**Order Type:**  
Default Order

**Findings Order Justification:**  
N/A

**Media:**  
MSW

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
905 East Vanderbilt Street, Stamford, Jones County

**Type of Operation:**  
scrap tire transport service

**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:** March 16, 2012

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$18,401

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$18,401

**Compliance History Classifications:**  
Person/CN – N/A  
Site/RN – N/A

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** July 8, 2010  
**Date(s) of NOV(s):** April 13, 2010  
**Date(s) of NOE(s):** August 20, 2010

***Violation Information***

1. Failed to ensure that used or scrap tires or tire pieces are transported to an authorized scrap tire facility [30 TEX. ADMIN. CODE § 328.57(c)(3)].
2. Failed to maintain records using a manifest system [30 TEX. ADMIN. CODE § 328.57(c)(2)].
3. Failed to obtain a scrap tire storage facility registration 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)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. Within 30 days:
  - a. Begin maintaining records using a manifest system
  - b. Develop and implement procedures to ensure that all used or scrap tires or tire pieces are transported to an authorized facility; and
  - c. Remove all scrap tires located on the Lovvorn Ranch property and dispose of them at an authorized facility.
2. Within 45 days, submit written certification to demonstrate compliance.

***Litigation Information***

**Date Petition(s) Filed:** April 6, 2011 (EDPRP); January 13, 2012 (EDFARP)  
**Date(s) Green Card(s) Signed:** Unclaimed (EDPRP); January 17, 2012 (EDFARP)  
**Date(s) Answer(s) Filed:** N/A

***Contact Information***

**TCEQ Attorneys:** Kari L. Gilbreth, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
**TCEQ Enforcement Coordinator:** Tom Greimel, Waste Enforcement Section, (512) 239-5690  
**TCEQ Regional Contact:** Mike Taylor, Abilene Regional Office, (325) 698-6125  
**Respondent:** Robert Keller, 905 East Vanderbilt Street, Stamford, Texas 79553  
**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>	23-Aug-2010	<b>Screening</b>	26-Aug-2010	<b>EPA Due</b>	
	<b>PCW</b>	16-Dec-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Robert Keller d/b/a Robert Keller Tire Service
<b>Reg. Ent. Ref. No.</b>	RN105896237
<b>Facility/Site Region</b>	3-Abilene
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	40330	<b>No. of Violations</b>	3
<b>Docket No.</b>	2010-1441-MSW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Waste Tires	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Tate Barrett
		<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>	<b>\$7,500</b>
-------------------------------------------------------------	-------------------	----------------

### 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>	<b>\$375</b>
---------------------------	------------------	--------------------------------	--------------

Notes: Recommended enhancement for one Notice of Violation with same/similar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
--------------------	----	------------------	-------------------	------------

Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
------------------------------------------------------	-------------------	------------

<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
-------------------------	-------------------	-------------------	------------

Total EB Amounts	\$10,808
Approx. Cost of Compliance	\$18,473

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$7,875</b>
-----------------------------	-----------------------	----------------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	133.7%	<b>Adjustment</b>	<b>\$10,526</b>
---------------------------------------------	--------	-------------------	-----------------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost of compliance associated with violation no. 3.

<b>Final Penalty Amount</b>	<b>\$18,401</b>
-----------------------------	-----------------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$18,401</b>
-----------------------------------	-------------------------------	-----------------

<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
-----------------	----------------	-------------------	------------

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$18,401</b>
------------------------	-----------------

**Screening Date** 26-Aug-2010

**Docket No.** 2010-1441-MSW-E

**PCW**

**Respondent** Robert Keller d/b/a Robert Keller Tire Service

*Policy Revision 2 (September 2002)*

**Case ID No.** 40330

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105896237

**Media [Statute]** Waste Tires

**Enf. Coordinator** Tate Barrett

### 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)**

N/A

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

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

N/A

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

**>> Compliance History Summary**

**Compliance History Notes**

Recommended enhancement for one Notice of Violation with same/similar violations.

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

Screening Date 26-Aug-2010

Docket No. 2010-1441-MSW-E

PCW

Respondent Robert Keller d/b/a Robert Keller Tire Service

Policy Revision 2 (September 2002)

Case ID No. 40330

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105896237

Media [Statute] Waste Tires

Enf. Coordinator Tate Barrett

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 328.57(c)(3)

Violation Description Failed to ensure that used or scrap tire pieces are transported to an authorized scrap tire facility. Specifically, approximately 4,250 scrap tires (approximately 425 cubic yards) were transported to a facility that was not authorized for scrap tire storage, processing or disposal.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (25%). Includes 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and 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 \$7,500

\$2,500

Violation Events

Number of Violation Events 1 49 Number of violation days

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

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the July 8, 2010 investigation to the August 26, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$279

Violation Final Penalty Total \$6,134

This violation Final Assessed Penalty (adjusted for limits) \$6,134

## Economic Benefit Worksheet

**Respondent** Robert Keller d/b/a Robert Keller Tire Service  
**Case ID No.** 40330  
**Req. Ent. Reference No.** RN105896237  
**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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$8,373	8-Jul-2010	8-Mar-2011	0.67	\$279	n/a	\$279

Notes for DELAYED costs

Estimated cost to transport 4,250 tires to an authorized scrap tire facility for disposal. The date required is the date of the investigation 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

\$8,373

**TOTAL**

\$279

Screening Date 26-Aug-2010

Docket No. 2010-1441-MSW-E

PCW

Respondent Robert Keller d/b/a Robert Keller Tire Service

Policy Revision 2 (September 2002)

Case ID No. 40330

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105896237

Media [Statute] Waste Tires

Enf. Coordinator Tate Barrett

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 328.57(c)(2)

Violation Description Failed to maintain records using a manifest system. Specifically, manifests used by the Respondent were not properly completed.

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 1 49 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the July 8, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$6,134

This violation Final Assessed Penalty (adjusted for limits) \$6,134

## Economic Benefit Worksheet

**Respondent** Robert Keller d/b/a Robert Keller Tire Service  
**Case ID No.** 40330  
**Req. Ent. Reference No.** RN105896237  
**Media** Waste Tires  
**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	\$100	8-Jul-2010	8-Mar-2011	0.67	\$3	n/a	\$3
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 begin using manifests as a record keeping system. The date required is the date of the investigation 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

\$100

**TOTAL**

\$3

Screening Date 26-Aug-2010

Docket No. 2010-1441-MSW-E

PCW

Respondent Robert Keller d/b/a Robert Keller Tire Service

Policy Revision 2 (September 2002)

Case ID No. 40330

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105896237

Media [Statute] Waste Tires

Enf. Coordinator Tate Barrett

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 328.56(d)(2) and 328.60(a)

Violation Description Failed to obtain a scrap tire storage facility registration prior to storing more than 500 used or scrap tires on the ground. Specifically, at the time of the investigation, approximately 4,250 scrap tires were stored on leased property that was not authorized for scrap tire storage.

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 1 49 Number of violation days

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

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the July 8, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$10,526 Violation Final Penalty Total \$6,134

This violation Final Assessed Penalty (adjusted for limits) \$6,134

## Economic Benefit Worksheet

**Respondent** Robert Keller d/b/a Robert Keller Tire Service  
**Case ID No.** 40330  
**Req. Ent. Reference No.** RN105896237  
**Media** Waste Tires  
**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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				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)	\$10,000	8-Jul-2010	26-Aug-2010	1.05	\$526	\$10,000	\$10,526

Notes for AVOIDED costs

Estimated avoided cost to register the Site as a scrap tire storage facility. The date required is the date of the investigation and the final date is the date the Respondent ended the lease agreement for the Lovvorn Ranch property.

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$10,526

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603646449 Robert Keller Classification: Rating:  
Regulated Entity: RN105896237 Robert Keller Tire Service Classification: Site Rating:  
ID Number(s): TIRES REGISTRATION 6200613  
Location: 905 E. Vanderbilt St., Stamford, TX 79553-5808  
TCEQ Region: REGION 03 - ABILENE  
Date Compliance History Prepared: August 27, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 27, 2005 to August 27, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Tate Barrett Phone: (713) 422-8968

## 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

## Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 04/13/2010 (797497)  
2 08/20/2010 (841521)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
**Date: 04/13/2010 (797497)**  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 328, SubChapter F 328.57(c)(3)  
Description: Failure to transport and dispose of scrap tires or tire pieces at an authorized scrap tire facility. Robert Keller Tire Service failed to comply with the NOV dated April 13, 2010, by the compliance due date, June 30, 2010. Robert Keller Tire Service failed to dispose of tires collected from generators at an authorized scrap tire facility.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 328, SubChapter F 328.57(c)(2)  
Description: Robert Keller Tire Service failed to comply with the NOV dated April 13, 2010, by June 30, 2010. Robert Keller Tire Service was paid \$238.00 by the City of Albany on April 1, 2010, for the removal and disposal of tires. Robert Keller Tire Service failed provide the City of Albany with manifests for the pickup of tires and failed to provide an additional copy of the manifests within 60 days showing disposal of the tires at a properly permitted site.
- 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

**THIS PAGE INTENTIONALLY LEFT BLANK**

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ROBERT KELLER D/B/A  
ROBERT KELLER TIRE  
SERVICE;  
RN105896237**

**§  
§  
§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2010-1441-MSW-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's First Amended 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 Keller d/b/a Robert Keller Tire Service ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns a scrap tire transport service located at 905 East Vanderbilt Street in Stamford, Jones 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 July 8, 2010, a TCEQ Abilene Regional Office investigator documented that Respondent:
  - a. Failed to ensure that used or scrap tires or tire pieces are transported to an authorized scrap tire facility. Specifically, approximately 4,250 scrap tires (approximately 425 cubic yards) were transported to "Lovvorn Ranch" in Jones County, Texas, a facility that was not authorized for scrap tire storage, processing, or disposal<sup>1</sup>;
  - b. Failed to maintain records using a manifest system. Specifically, manifests used by Respondent were not properly completed; and
  - c. Failed to obtain a scrap tire storage facility registration prior to storing more than 500 used or scrap tires on the ground. Specifically, approximately 4,250 scrap tires were stored on leased property that was not authorized for scrap tire storage ("Lovvorn Ranch").

---

<sup>1</sup> The Lovvorn Ranch may be located using the following directions: Drive south from the City of Stamford, Texas on State Highway ("SH") 1226 for approximately 2.4 miles. Turn east onto County Road ("CR") 216 and travel approximately 2.2 miles, turning on Farm to Market ("FM") Road 1636. Travel east on FM 1636 approximately 0.9 miles. Turn south onto CR 275 for approximately 1.5 miles. Turn on a crop row road traveling west for 0.4 miles into the ranch property area.

3. Respondent received notice of the violations on or about (NOE date plus 5 days).
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 Keller d/b/a Robert Keller Tire Service" (the "EDPRP") in the TCEQ Chief Clerk's office on April 6, 2011.
5. By letter dated April 6, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
6. The Executive Director filed the "Executive Director's First Amended 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 Keller d/b/a Robert Keller Tire Service" (the "EDFARP") in the TCEQ Chief Clerk's office on January 13, 2012.
7. By letter dated January 13, 2012, 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 EDFARP. According to the return receipt "green card," Respondent received notice of the EDFARP on January 17, 2012, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Respondent received notice of the EDPRP and EDFARP, provided by the Executive Director. Respondent failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to ensure that used or scrap tires or tire pieces are transported to an authorized scrap tire facility, in violation of 30 TEX. ADMIN. CODE § 328.57(c)(3).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to maintain records using a manifest system, in violation of 30 TEX. ADMIN. CODE § 328.57(c)(2).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to obtain a scrap tire storage facility registration 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).
5. As evidenced by Findings of Fact Nos. 4, 5, 6 and 7, the Executive Director timely served Respondent with proper notice of the EDPRP and EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).

6. As evidenced by Finding of Fact No. 8, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of eighteen thousand four hundred one dollars (\$18,401.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

#### **ORDERING PROVISIONS**

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

1. Respondent is assessed an administrative penalty in the amount of eighteen thousand four hundred one dollars (\$18,401.00) 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 Keller d/b/a Robert Keller Tire Service; Docket No. 2010-1441-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. Within 30 days after the effective date of this Order, Respondent shall:
    - i. Begin maintaining records using a manifest system, in accordance with 30 TEX. ADMIN. CODE §§ 328.57 and 328.58;

- ii. Develop and implement procedures to ensure that all used or scrap tires or tire pieces are transported to an authorized facility, in accordance with 30 TEX. ADMIN. CODE § 328.57; and
  - iii. Remove all scrap tires located on the Lovvorn Ranch property and dispose of them at an authorized facility.
- b. 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 Provisions Nos. 3.a.i. through 3.a.iii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

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

Mike Taylor, Waste Section Manager  
Texas Commission on Environmental Quality  
Abilene Regional Office  
1977 Industrial Boulevard  
Abilene, Texas 79602-7833

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 KARI L. GILBRETH**

**STATE OF TEXAS**

§

**COUNTY OF TRAVIS**

§

§

"My name is Kari L. Gilbreth. 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 Keller d/b/a Robert Keller Tire Service" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on April 6, 2011.

The EDPRP was mailed to Respondent's last known address on April 6, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's First Amended 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 Keller d/b/a Robert Keller Tire Service" (the "EDFARP") was filed in the TCEQ Chief Clerk's office on January 13, 2012.

The EDFARP was sent to Respondent's last known address on January 13, 2012, 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 EDFARP on January 17, 2012, as evidenced by the signature on the card.

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

*Kari L. Gilbreth*  
Kari L. Gilbreth, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Kari L. Gilbreth, 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 16<sup>th</sup> day of February, A.D. 2012.

*Margaret Jackson*  
Notary Signature

