EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 42368
Danny Joe King d/b/a Kings Tire & Wheel
RN106116999
Docket No. 2011-1510-MSW-E

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
MSW

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
20000 US Highway 59, New Caney, Montgomery County

Type of Operation:
tire and wheel retail shop

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 30, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: $525

Total Paid to General Revenue: $0

Total Due to General Revenue: $525

Compliance History Classifications:
Person/CN – Not yet rated
Site/RN – Not yet rated

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): August 16, 2011
Complaint Information: Complainant alleged numerous tires on-site harboring a large populations of mosquitoes.

Date(s) of Investigation: July 27, 2011

Date(s) of NOV(s): April 28, 2011

Date(s) of NOE(s): August 15, 2011

Violation Information

Failed to monitor for vectors and utilize appropriate vector control measures at least once every two weeks [30 TEX. ADMIN. CODE § 328.56(d)(4)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
None

Technical Requirements:

1. Immediately begin vector monitoring and utilization of vector control measures.
2. Within 15 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: December 28, 2011

Date Green Card(s) Signed: Unclaimed

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Elizabeth Lieberknecht, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Danielle Porras, Enforcement Division, (713) 767-3682

TCEQ Regional Contact: Nicole Bealle, Houston Regional Office, (713) 767-3500

Respondent: Danny Joe King, Kings Tire & Wheel, P.O. Box 504, New Caney, Texas 77357-0504

Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	22-Aug-2011				
PCW	21-Nov-2011	Screening	25-Aug-2011	EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	Danny Joe King dba Kings Tire & Wheel		
Reg. Ent. Ref. No.	RN106116999		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	42368	No. of Violations	1
Docket No.	2011-1510-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		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* **$500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **5.0%** Enhancement *Subtotals 2, 3, & 7* **$25**

Notes: Enhancement for one previous NOV with same/similar violations.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts $17
Approx. Cost of Compliance $500

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* **$525**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** *Adjustment* **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$525**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **$525**

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

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **$525**

Screening Date	25-Aug-2011	**Docket No.**	2011-1510-MSW-E	**PCW**
Respondent	Danny Joe King dba Kings Tire & Wheel			*Policy Revision 2 (September 2002)*
Case ID No.	42368			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN106116999			
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 (*number of NOVs meeting criteria*)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%
		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

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

Enhancement for one previous NOV with same/similar violations.

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

Screening Date	25-Aug-2011	**Docket No.**	2011-1510-MSW-E	**PCW**
Respondent	Danny Joe King dba Kings Tire & Wheel			*Policy Revision 2 (September 2002)*
Case ID No.	42368			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN106116999			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Danielle Porras			

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 328.56(d)(4)

Violation Description Failed to monitor for vector control and apply appropriate vector control measures at least once every two weeks.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $9,500

$500

Violation Events

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

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

One single event is recommended based on documentation of the violation during the July 27, 2011 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 $500

Economic Benefit (EB) for this violation

Estimated EB Amount $17

Statutory Limit Test

Violation Final Penalty Total $525

This violation Final Assessed Penalty (adjusted for limits) $525

Economic Benefit Worksheet

Respondent Danny Joe King dba Kings Tire & Wheel
Case ID No. 42368
Reg. Ent. Reference No. RN106116999
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				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	27-Jul-2011	26-Mar-2012	0.67	$17	n/a	$17

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 $17

Compliance History

Customer/Respondent/Owner-Operator:	CN603833732	Danny Joe King	Classification:	Rating:
Regulated Entity:	RN106116999	Kings Tire & Wheel	Classification:	Site Rating:
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER			455120146
Location:	20000 US HIGHWAY 59, NEW CANEY, TX, 77357			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	August 25, 2011			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 25, 2006 to August 25, 2011			

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

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 8/18/2011 (943880)

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

Date: 04/28/2011 (906187) CN603833732

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.56(d)(4)

Description: Failure to monitor or control vectors.

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 DANNY JOE KING D/B/A KINGS TIRE & WHEEL; RN106116999	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2011-1510-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 Danny Joe King d/b/a Kings Tire & Wheel ("Respondent").

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

FINDINGS OF FACT

1. Respondent operates a tire and wheel retail shop that generates scrap tires located at 20000 US Highway 59 in New Caney, Montgomery 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 27, 2011, a TCEQ Houston Regional Office investigator documented that Respondent failed to monitor for vectors and utilize appropriate vector control measures at least once every two weeks.

3. Respondent received notice of the violation on or about August 20, 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 Danny Joe King d/b/a Kings Tire & Wheel" (the "EDPRP") in the TCEQ Chief Clerk's office on December 28, 2011.

5. By letter dated December 28, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.

6. More than 20 days have elapsed since Respondent received notice of the EDPRP. 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, Respondent failed to monitor for vectors and utilize appropriate vector control measures at least once every two weeks, in violation of 30 TEX. ADMIN. CODE § 328.56(d)(4).

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(c)(2).

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 five hundred twenty-five dollars ($525.00) 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 five hundred twenty-five dollars ($525.00) 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: Danny Joe King d/b/a Kings Tire & Wheel; Docket No. 2011-1510-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 begin vector monitoring and utilization of vector control measures, in accordance with 30 TEX. ADMIN. CODE § 328.56.

   b. Within 15 days after the effective date of this Order, Respondent shall submit written certification, as described below, to demonstrate compliance with Ordering Provision No. 3.a. The certifications 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."

   Respondent shall submit the written certifications 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:

      Nicole Bealle, Waste Section Manager
      Texas Commission on Environmental Quality
      Houston Regional Office
      5425 Polk Street, Suite H
      Houston, Texas 77023-1452

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 ELIZABETH LIEBERKNECHT

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Elizabeth Lieberknecht. 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 Danny Joe King d/b/a Kings Tire & Wheel" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 28, 2011.

The EDPRP was mailed to Respondent's last known address on December 28, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

Elizabeth Lieberknecht, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Elizabeth Lieberknecht, 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 12th day of March, A.D. 2012.

Notary Signature

MARGARET T JACKSON
NOTARY PUBLIC
State of Texas
Comm. Exp. 12-21-2013