

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 44610  
Leo Graves d/b/a Graves Tire Service  
RN106449002  
Docket No. 2012-1480-MLM-E

**Order Type:**

Default Order (SOAH preliminary hearing)

**Media:**

Used Oil and MSW (Waste Tires)

**Small Business:**

Yes

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

900 East Sabine Street, Carthage, Panola County

**Type of Operation:**

tire service 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:** September 13, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$4,000

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

**Total Due to General Revenue:** \$4,000

**Compliance History Classifications:**

Person/CN – Not yet rated  
Site/RN – Not yet rated

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** May 23, 2012  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** July 7, 2012

**Violation Information**

1. Failed to obtain completed manifests from the transporter within 60 days after scrap tires or tire pieces were transported off-site [30 TEX. ADMIN. CODE § 328.58(d)].
2. Failed to prevent the unauthorized disposal of used oil (soil below a pier and beam foundation attached to the north central portion of the Facility and three areas located east of the outdoor tire storage area were contaminated with used oil. Soil sample analysis revealed a Total Petroleum Hydrocarbon ("TPH") level of 92,100 milligrams per kilogram ("mg/kg"), which exceeds the 2,300 mg/kg protective concentration level for TPH for a residential area as set by the Texas Risk Reduction Program) [30 TEX. ADMIN. CODE § 324.4(1) and 40 C.F.R. § 279.22(d)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Immediately, cease disposing of any additional used oil at the Facility.
2. Within 30 days:
  - a. Remove all contaminated soil from the Facility and dispose of it at an authorized facility; and
  - b. Develop and implement procedures to ensure that all scrap tire manifests are properly completed and returned within 60 days after the scrap tires have been transported off-site.
3. Within 45 days, submit written certification to demonstrate compliance

**Litigation Information**

**Date Petition(s) Filed:** December 27, 2012  
**Date Green Card(s) Signed:** January 2, 2013  
**Date Answer(s) Filed:** January 17, 2013  
**SOAH Referral Date:** February 22, 2013  
**Hearing Date(s):**  
Preliminary hearing: June 20, 2013 (Defaulted)

**Contact Information**

**TCEQ Attorneys:** Rudy Calderon, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Amy Swanholm, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Rajesh Acharya, Enforcement Division, (512) 239-0577  
**TCEQ Regional Contact:** Michael Brashear, Tyler Regional Office, (903) 535-5100  
**Respondent:** Leo Graves, 900 East Sabine Street, Carthage, Texas 75633  
**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	16-Jul-2012	<b>Screening</b>	19-Jul-2012	<b>EPA Due</b>	
	<b>PCW</b>	2-Nov-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Leo Graves dba Graves Tire Service		
<b>Reg. Ent. Ref. No.</b>	RN106449002		
<b>Facility/Site Region</b>	5-Tyler	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	44610	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-1480-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Waste Tires	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Used Oil	<b>Enf. Coordinator</b>	Rajesh Acharya
		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** **0.0%** Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability**  **0.0%** Enhancement **Subtotal 4**

Notes

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

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6**

Total EB Amounts   
 Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

Notes

**PAYABLE PENALTY**

<b>Screening Date</b>	19-Jul-2012	<b>Docket No.</b>	2012-1480-MLM-E	<b>PCW</b>
<b>Respondent</b>	Leo Graves dba Graves Tire Service			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	44610			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN106449002			
<b>Media [Statute]</b>	Waste Tires			
<b>Enf. Coordinator</b>	Rajesh Acharya			

### 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> )	0	0%
	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)**

>> **Repeat Violator (Subtotal 3)**

**Adjustment Percentage (Subtotal 3)**

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

**Adjustment Percentage (Subtotal 7)**

>> **Compliance History Summary**

**Compliance History Notes**

No adjustment for compliance history.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)**

>> **Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%**

<b>Screening Date</b>	19-Jul-2012	<b>Docket No.</b>	2012-1480-MLM-E	<b>PCW</b>
<b>Respondent</b>	Leo Graves dba Graves Tire Service		Policy Revision 3 (September 2011)	
<b>Case ID No.</b>	44610	PCW Revision August 3, 2011		
<b>Reg. Ent. Reference No.</b>	RN106449002			
<b>Media [Statute]</b>	Waste Tires			
<b>Enf. Coordinator</b>	Rajesh Acharya			

**Violation Number**

**Rule Cite(s)**

30 Tex. Admin. Code § 328.58(d)

**Violation Description**

Failed to obtain the completed manifests from the transporter within 60 days after the scrap tires or tire pieces were transported off-site. Specifically, the Respondent did not have completed scrap tire manifests for tires shipped by the transporter.

**Base Penalty**

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Percent**

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>

**Percent**

**Matrix Notes**

100% of the rule requirement was not met.

**Adjustment**

Violation Events

Number of Violation Events  Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input checked="" type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

Two monthly events are recommended from the May 23, 2012 investigation date to the July 19, 2012 screening date.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

**Notes**

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

**Violation Subtotal**

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** Leo Graves dba Graves Tire Service  
**Case ID No.** 44610  
**Reg. Ent. Reference No.** RN106449002  
**Media Violation No.** Waste Tires  
 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	\$250	23-May-2012	23-Jan-2013	0.67	\$8	n/a	\$8
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 submit completed manifests and develop and implement procedures to ensure that manifests are properly completed and returned to the Respondent. Date Required is the investigation date. Final Date is the estimated 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 \$250

**TOTAL** \$8



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	16-Jul-2012	Screening	19-Jul-2012	EPA Due	
	PCW	2-Nov-2012				

## RESPONDENT/FACILITY INFORMATION

Respondent	Leo Graves dba Graves Tire Service		
Reg. Ent. Ref. No.	RN106449002		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	44610	No. of Violations	1
Docket No.	2012-1480-MLM-E	Order Type	1660
Media Program(s)	Used Oil	Government/Non-Profit	No
Multi-Media	Waste Tires	Enf. Coordinator	Rajesh Acharya
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability**   Enhancement **Subtotal 4**

Notes

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

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts   
 Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

Notes

**PAYABLE PENALTY**

<b>Screening Date</b>	19-Jul-2012	<b>Docket No.</b>	2012-1480-MLM-E	<b>PCW</b>
<b>Respondent</b>	Leo Graves dba Graves Tire Service			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	44610			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN106449002			
<b>Media [Statute]</b>	Used Oil			
<b>Enf. Coordinator</b>	Rajesh Acharya			

### 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> )	0	0%
	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)** 0%

>> **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**

No adjustment for compliance history.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

>> **Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 0%

<b>Screening Date</b>	19-Jul-2012	<b>Docket No.</b>	2012-1480-MLM-E	<b>PCW</b>
<b>Respondent</b>	Leo Graves dba Graves Tire Service			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	44610			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN106449002			
<b>Media [Statute]</b>	Used Oil			
<b>Enf. Coordinator</b>	Rajesh Acharya			

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<input type="text"/>	x	<input type="text"/>	<b>Percent</b> <input type="text" value="15.0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0.0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	x
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with x)

**Notes**

**Violation Subtotal**

**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** Leo Graves dba Graves Tire Service  
**Case ID No.** 44610  
**Reg. Ent. Reference No.** RN106449002  
**Media** Used Oil  
**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	\$2,500	23-May-2012	23-Jan-2013	0.67	\$84	n/a	\$84
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly dispose of contaminated soils. Date Required is the date of the investigation.  
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

\$2,500

**TOTAL**

\$84

# Compliance History Report

Customer/Respondent/Owner-Operator: CN604123638 Leo Graves Classification: Rating:  
Regulated Entity: RN106449002 GRAVES TIRE SERVICE Classification: Site Rating:  
ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R05106449002  
Location: 900 E SABINE ST, CARTHAGE, TX, 75633  
TCEQ Region: REGION 05 - TYLER  
Date Compliance History Prepared: August 10, 2012  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 10, 2007 to August 10, 2012  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Rajesh Acharya Phone: (512) 239-0577

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? NO
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. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: N/A Repeat Violator: 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.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - 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  
LEO GRAVES D/B/A  
GRAVES TIRE SERVICE;  
RN106449002**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2012-1480-MLM-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 chs. 361 and 371, 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 Leo Graves d/b/a Graves Tire Service ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a tire service facility located at 900 East Sabine Street in Carthage, Panola 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, and the management and/or the disposal of used oil as defined in TEX. HEALTH & SAFETY CODE ch. 371.
2. During an investigation conducted on May 23, 2012, a TCEQ Tyler Regional Office investigator documented that Respondent:
  - a. Failed to obtain completed manifests from the transporter within 60 days after scrap tires or tire pieces were transported off-site; and
  - b. Failed to prevent the unauthorized disposal of used oil. Specifically, the soil below a pier and beam foundation attached to the north central portion of the Facility was heavily saturated with used oil. Also, three additional areas located east of the outdoor tire storage area at the Facility were contaminated with used oil. Analysis of a soil sample collected from the contaminated area had a Total Petroleum Hydrocarbon ("TPH") level of 92,100 milligrams per kilogram ("mg/kg"). The contaminated area exceeded 2,300 mg/kg protective concentration level for TPH for a residential area as set by the Texas Risk Reduction Program.
3. 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 Leo Graves d/b/a Graves Tire Service" (the "EDPRP") in the TCEQ Chief Clerk's office on December 27, 2012.
4. Respondent filed an answer requesting a hearing on January 17, 2013, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on February 22, 2013.

5. On February 28, 2013, the TCEQ Chief Clerk mailed notice of the March 28, 2013, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid, to Respondent.
6. On May 8, 2013, the Administrative Law Judge ("ALJ") issued Order No. 2, Rescheduling Preliminary Hearing, which reset the preliminary hearing for June 20, 2013. The SOAH docket clerk mailed a copy of Order No. 2 to Respondent on May 8, 2013, at his last known address via first class mail, postage prepaid.
7. On June 20, 2013, the ALJ convened the preliminary hearing. Respondent failed to appear, and the Executive Director requested that the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.
8. On July 8, 2013, the ALJ issued Order No. 3, Conditional Remand to Executive Director, requiring Respondent to file a request to reset the preliminary hearing by July 22, 2013, or the case would be dismissed from the SOAH docket and remanded to the Executive Director without further action being required of the ED or the ALJ. Respondent failed to file a request to reset the preliminary 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 chs. 361 and 371 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to obtain completed manifests from the transporter within 60 days after scrap tires or tire pieces were transported off-site, in violation of 30 TEX. ADMIN. CODE § 328.58(d).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to prevent the unauthorized disposal of used oil, in violation of 30 TEX. ADMIN. CODE § 324.4(1) and 40 C.F.R. § 279.22(d).
4. As evidenced by Finding of Fact No. 4, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
5. As evidenced by Findings of Fact Nos. 5 and 6, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.
6. As evidenced by Findings of Fact Nos. 7 and 8, Respondent failed to appear at the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).
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 four thousand dollars (\$4,000.00) 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 four thousand dollars (\$4,000.00) 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: Leo Graves d/b/a Graves Tire Service; Docket No. 2012-1480-MLM-E" to:

Financial Administration Division, Revenues Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088
3. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Respondent shall cease disposing of any additional used oil at the Facility.
  - b. Within 30 days after the effective date of this Order, Respondent shall:
    - i. Remove all contaminated soil from the Facility and dispose of it at an authorized facility; and
    - ii. Develop and implement procedures to ensure that all scrap tire manifests are properly completed and returned within 60 days after the scrap tires have been transported off-site, in accordance with 30 TEX. ADMIN. CODE § 328.58(d).
  - c. Within 45 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b. The certification required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe

that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

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

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

and:

Michael Brashear, Waste Section Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

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 RUDY CALDERON**

**STATE OF TEXAS**

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§  
§

**COUNTY OF TRAVIS**

"My name is Rudy Calderon. 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 Leo Graves d/b/a Graves Tire Service" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 27, 2012.

Respondent filed an answer requesting a hearing on January 17, 2013, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on February 22, 2013. On February 28, 2013, the TCEQ Chief Clerk mailed notice of the March 28, 2013, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid, to Respondent.

On May 8, 2013, the Administrative Law Judge ("ALJ") issued Order No. 2, Rescheduling Preliminary Hearing, which reset the preliminary hearing for June 20, 2013. The SOAH docket clerk mailed a copy of Order No. 2 to Respondent on May 8, 2013, at his last known address via first class mail, postage prepaid.

Respondent failed to appear at the hearing on June 20, 2013. At that hearing, I requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the TCEQ for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

The ALJ conditionally remanded the matter to the Executive Director by SOAH Order No. 3, Conditional Remand to Executive Director, issued on July 8, 2013. Order No. 3 required Respondent to file a request to reset the preliminary hearing by July 22, 2013, or the case would be dismissed from the SOAH docket and remanded to the Executive Director without further action being required of the ED or the ALJ. Respondent failed to file a request to reset the preliminary hearing.

Rudy Calderon, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, 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 28th day of August, A.D. 2013.

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