

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 41927  
Penny Cable DBA Hilltop Tire Service  
RN101896538  
Docket No. 2011-1053-MSW-E

**Order Type:**

Default Order (SOAH preliminary hearing)

**Media:**

MSW

**Small Business:**

Yes

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

618 West Wise Street, Bowie, Montague County

**Type of Operation:**

new and used 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:** April 12, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$7,500

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

**Total Due to General Revenue:** \$7,500

**Compliance History Classifications:**

Person/CN – N/A

Site/RN – N/A

**Major Source:** Yes

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2002

**Investigation Information**

**Complaint Date(s):** N/A

**Date(s) of Investigation:** April 25, 2011

**Date(s) of NOV(s):** N/A

**Date(s) of NOE(s):** June 6, 2011

**Penny Cable DBA Hilltop Tire Service**

RN101896538

Docket No. 2011-1053-MSW-E

**Violation Information**

1. Failed to use a registered transporter to transport scrap tires, and failed to prevent the unauthorized disposal of municipal solid waste ("MSW") (approx. 300 scrap tires) [30 TEX. ADMIN. CODE §§ 328.56(b) and 330.15(c)].
2. Failed to use manifests to document the removal and management of all scrap tires generated at the Facility [30 TEX. ADMIN. CODE § 328.56(c)].

**Corrective Actions/Technical Requirements****Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Immediately, cease transporting additional scrap tires and scrap tire pieces to unauthorized facilities.
2. Within 30 days:
  - a. Develop and implement procedures to ensure that all scrap tires or scrap tire pieces are transported by a registered transporter to an authorized scrap tire facility; and
  - b. Develop and implement procedures to ensure use of manifests to document the removal and management of all scrap tires generated at the Facility.
3. Within 45 days, submit written certification to demonstrate compliance.

**Litigation Information**

**Date Petition(s) Filed:** February 16, 2012  
**Date Green Card(s) Signed:** March 1, 2012  
**Date Answer(s) Filed:** August 6, 2012  
**SOAH Referral Date:** October 31, 2012  
**Hearing Date(s):**  
Preliminary hearing: March 7, 2013 (defaulted)  
Evidentiary hearing: N/A

**Contact Information**

**TCEQ Attorneys:** Tammy L. Mitchell, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Scott Humphrey, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Clinton Sims, Enforcement Division, (512) 239-6933

**TCEQ Regional Contact:** Mike Taylor, Abilene Regional Office, (325) 698-6125

**Respondent:** Penny Cable, P.O. Box 305, Nocona, Texas 76255-0305

**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>	13-Jun-2011	<b>Screening</b>	23-Jun-2011	<b>EPA Due</b>	
	<b>PCW</b>	24-Jun-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Penny Cable dba Hilltop Tire Service		
<b>Reg. Ent. Ref. No.</b>	RN101896538		
<b>Facility/Site Region</b>	3-Abilene	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	41927	<b>No. of Violations</b>	2
<b>Docket No.</b>	2011-1053-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>	Clinton Sims
		<b>EC's Team</b>	Enforcement Team 6
<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>	\$7,500
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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<b>Notes</b>	No adjustment for compliance history.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$66	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,500	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$7,500
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$7,500
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$7,500
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$7,500
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Screening Date 23-Jun-2011

Docket No. 2011-1053-MSW-E

PCW

Respondent Penny Cable dba Hilltop Tire Service

Policy Revision 2 (September 2002)

Case ID No. 41927

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101896538

Media [Statute] Waste Tires

Enf. Coordinator Clinton Sims

### 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 Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

**Screening Date** 23-Jun-2011 **Docket No.** 2011-1053-MSW-E **PCW**  
**Respondent** Penny Cable dba Hilltop Tire Service *Policy Revision 2 (September 2002)*  
**Case ID No.** 41927 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101896538  
**Media [Statute]** Waste Tires  
**Enf. Coordinator** Clinton Sims

**Violation Number** 1

**Rule Cite(s)**

30 Tex. Admin. Code §§ 328.56(b) and 330.15(c)

**Violation Description**

Failed to use a registered transporter to transport scrap tires and failed to prevent the unauthorized disposal of municipal solid waste. Specifically, approximately 300 scrap tires were transported and disposed of at an unauthorized site.

**Base Penalty** \$10,000

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

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

**Percent** 50%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

**Percent** 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** \$5,000

\$5,000

**Violation Events**

Number of Violation Events 1 59 Number of violation days

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

**Violation Base Penalty** \$5,000

One quarterly event is recommended based on the April 25, 2011 investigation date to the June 23, 2011 screening date.

**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** \$5,000

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$44

**Violation Final Penalty Total** \$5,000

**This violation Final Assessed Penalty (adjusted for limits)** \$5,000

# Economic Benefit Worksheet

**Respondent** Penny Cable dba Hilltop Tire Service  
**Case ID No.** 41927  
**Reg. Ent. Reference No.** RN101896538  
**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	\$1,000	25-Apr-2011	11-Mar-2012	0.88	\$44	n/a	\$44
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 implement procedures to ensure that all scrap tires are transported by a registered transporter to a registered facility. 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**

<b>Approx. Cost of Compliance</b>	\$1,000	<b>TOTAL</b>	\$44
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Screening Date 23-Jun-2011

Docket No. 2011-1053-MSW-E

PCW

Respondent Penny Cable dba Hilltop Tire Service

Policy Revision 2 (September 2002)

Case ID No. 41927

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101896538

Media [Statute] Waste Tires

Enf. Coordinator Clinton Sims

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 328.56(c)

Violation Description

Failed to use manifests to document the removal and management of all scrap tires generated on-site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

59 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 the April 25, 2011 investigation date.

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 \$22

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

# Economic Benefit Worksheet

**Respondent** Penny Cable dba Hilltop Tire Service  
**Case ID No.** 41927  
**Reg. Ent. Reference No.** RN101896538  
**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	\$500	25-Apr-2011	11-Mar-2012	0.88	\$22	n/a	\$22
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 maintain manifests to document the removal and management of all scrap tires generated on-site. 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**

<b>Approx. Cost of Compliance</b>	\$500	<b>TOTAL</b>	\$22
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# Compliance History

Customer/Respondent/Owner-Operator: CN601655129 Penny Cable Classification: Rating:  
Regulated Entity: RN101896538 HILLTOP TIRE SERVICE Classification: Site Rating:  
ID Number(s):  
Location: 618 W WISE ST, BOWIE, TX, 76230  
TCEQ Region: REGION 03 - ABILENE  
Date Compliance History Prepared: June 23, 2011  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: June 23, 2006 to June 23, 2011  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Clinton Sims Phone: (512) 239-6933

## 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.)  
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  
PENNY CABLE D/B/A  
HILLTOP TIRE SERVICE;  
RN101896538**

**§  
§  
§  
§  
§  
§**

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2011-1053-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 Penny Cable d/b/a Hilltop Tire Service ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a new and used tire service facility located at 618 West Wise Street in Bowie, Montague County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on April 25, 2011, a TCEQ Abilene Regional Office investigator documented that Respondent:
  - a. Failed to use a registered transporter to transport scrap tires, and failed to prevent the unauthorized disposal of MSW. Specifically, approximately 300 scrap tires were transported and disposed of at an unauthorized site; and
  - b. Failed to use manifests to document the removal and management of all scrap tires generated at the Facility.
3. Respondent received notice of the violations on or about June 11, 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 Penny Cable d/b/a Hilltop Tire Service" (the "EDPRP") in the TCEQ Chief Clerk's office on February 16, 2012.
5. By letter dated February 16, 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 EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on March 1, 2012, as evidenced by the signature on the card.

6. Respondent filed an answer requesting a hearing on August 6, 2012, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on October 31, 2012.
7. On February 13, 2013, the TCEQ Chief Clerk mailed notice of the March 7, 2013, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.
8. On March 7, 2013, the Administrative Law Judge ("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.
9. On March 19, 2013, the ALJ entered a finding that Respondent was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No.3, Dismissing and Remanding, so that TCEQ may dispose of this case on a default basis.

#### **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 use a registered transporter to transport scrap tires, and failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE §§ 328.56(b) and 330.15(c).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to use manifests to document the removal and management of all scrap tires generated at the Facility, in violation of 30 TEX. ADMIN. CODE § 328.56(c).
4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 6, 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.
6. As evidenced by Finding of Fact No. 7, 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.
7. As evidenced by Findings of Fact Nos. 8 and 9, Respondent failed to appear for 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).

8. 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.
9. An administrative penalty in the amount of seven thousand five hundred dollars (\$7,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. 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 seven thousand five hundred dollars (\$7,500.00) 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: Penny Cable d/b/a Hilltop Tire Service; Docket No. 2011-1053-MSW-E" to:

Financial Administration Division, Revenues Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088
3. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Respondent shall cease transporting any additional scrap tires and scrap tire pieces to unauthorized facilities;
  - b. Within 30 days after the effective date of this Order, Respondent shall:
    - i. Develop and implement procedures to ensure that all scrap tires or scrap tire pieces are transported by a registered transporter to an authorized scrap tire facility, in accordance with 30 TEX. ADMIN. CODE § 328.56(b); and

- ii. Develop and implement procedures to ensure use of manifests to document the removal and management of all scrap tires generated at the Facility, in accordance with 30 TEX. ADMIN. CODE § 328.56(c).
- 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. through 3.b.ii. The certification 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:

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

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For the Commission

**AFFIDAVIT OF TAMMY L. MITCHELL**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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"My name is Tammy L. Mitchell. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

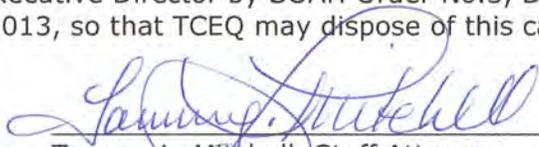
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Penny Cable d/b/a Hilltop Tire Service" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 16, 2012.

The EDPRP was mailed to Respondent's last known address on February 16, 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 EDPRP on March 1, 2012, as evidenced by the signature on the card.

Respondent filed an answer requesting a hearing on August 6, 2012, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on October 31, 2012. On February 13, 2013, the TCEQ Chief Clerk mailed notice of the March 7, 2013 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

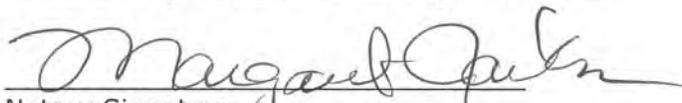
Respondent failed to appear at the hearing on March 7, 2013. At that hearing, I requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the agency for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

The ALJ remanded the matter to the Executive Director by SOAH Order No.3, Dismissing and Remanding, issued on March 19, 2013, so that TCEQ may dispose of this case on a default basis."

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

Before me, the undersigned authority, on this day personally appeared Tammy L. Mitchell, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 19 day of March, A.D. 2013.

  
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Notary Signature

