

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 47869
Lee Ann Potter d/b/a Awesome Tires & Wheels, and Chad Simons
RN106912090
Docket No. 2013-1993-MSW-E

Order Type:

Default Order

Media:

MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

2105 Farm-to-Market Road 1431, Marble Falls, Burnet County

Type of Operation:

used tire retail and transporting

Other Significant Matters:

Additional Pending Enforcement Actions: None

Past-Due Penalties: \$3,635.52 (2011-0491-MSW-E, RN105919740,
referred for collection)

Past-Due Fees: None

Other: None

Interested Third-Parties: None

Texas Register Publication Date: December 19, 2014

Comments Received: None

Penalty Information

Total Penalty Assessed: \$15,000

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$15,000

Compliance History Classifications:

Person /CN – Lee Ann Potter: Satisfactory

Chad Simons: NA

Site/RN – NA

Major Source: Yes

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): July 24, 2013
Complaint Information: Alleged the facility receives used tires, most of which remain on-site with no apparent intention to remove.

Date(s) of Investigation: August 15, 2013

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

Date(s) of NOE(s): October 14, 2013

Violation Information

1. Failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers, or in enclosed or lockable containers [30 TEX. ADMIN. CODE § 328.60(a)].
2. Failed to obtain a tire transporter registration prior to transporting used and/or scrap tires [30 TEX. ADMIN. CODE § 328.57(c)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondents obtained a valid tire transporter registration on October 29, 2013.

Technical Requirements:

1. Immediately, cease accepting any additional used and/or scrap tires and/or tire pieces at the Facility until such time as the proper registration is obtained.
2. Within 30 days, either obtain a scrap tire site registration for storage and processing of scrap tires or remove all used and/or scrap tires and/or tire pieces from the Facility and dispose of them at an authorized facility.
3. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: October 28, 2014

Date Green Card(s) Signed: October 29, 2014

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Meaghan M. Bailey, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Eli Martinez, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Mike Pace, Enforcement Division, 817-588-5933

TCEQ Regional Contact: David Mann, Austin Regional Office, 512-339-2929

Respondent Contacts: Lee Ann Potter, 2105 Farm-To-Market Road 1431, Marble Falls, Texas 78654;
Chad Simons, 2015 Farm-To-Market Road 1431, Marble Falls, Texas 78654



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	14-Oct-2013		
	PCW	22-Oct-2014	Screening	14-Oct-2013
			EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Lee Ann Potter dba Awesome Tires & Wheels and Chad Simons		
Reg. Ent. Ref. No.	RN106912090		
Facility/Site Region	11-Austin	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	47869	No. of Violations	2
Docket No.	2013-1993-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Mike Pace
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$15,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment for compliance history.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$384	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$15,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$15,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$15,000
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$15,000
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Screening Date 14-Oct-2013

Docket No. 2013-1993-MSW-E

PCW

Respondent Lee Ann Potter dba Awesome Tires & Wheels
and Chad Simons

Policy Revision 3 (September 2011)

Case ID No. 47869

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106912090

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

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%

Screening Date 14-Oct-2013 **Docket No.** 2013-1993-MSW-E **PCW**
Respondent Lee Ann Potter dba Awesome Tires & Wheels and Chad Simons
Case ID No. 47869 *Policy Revision 3 (September 2011)*
Reg. Ent. Reference No. RN106912090 *PCW Revision August 3, 2011*
Media [Statute] Municipal Solid Waste
Enf. Coordinator Mike Pace

Violation Number
Rule Cite(s)
Violation Description
Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

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	<input type="text" value="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	<input type="text" value="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 Lee Ann Potter dba Awesome Tires & Wheels and Chad Simons
Case ID No. 47869
Reg. Ent. Reference No. RN106912090
Media Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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	\$10,000	15-Aug-2013	22-May-2014	0.77	\$384	n/a	\$384
Other (as needed)			0.00	\$0	n/a	\$0	

Notes for DELAYED costs

Estimated cost to obtain a scrap tire storage site registration for the 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

Approx. Cost of Compliance \$10,000

TOTAL \$384

Screening Date 14-Oct-2013

Docket No. 2013-1993-MSW-E

PCW

Respondent Lee Ann Potter dba Awesome Tires & Wheels and Chad Simons

Policy Revision 3 (September 2011)

Case ID No. 47869

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106912090

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 328.57(c)(1)

Violation Description

Failed to obtain a tire transporter registration prior to transporting used and/or scrap tires.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 2

60 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

Two monthly events are recommended from the August 15, 2013 investigation to the October 14, 2013 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

No good faith reduction offered in default situation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$7,500

This violation Final Assessed Penalty (adjusted for limits) \$7,500

Economic Benefit Worksheet

Respondent Lee Ann Potter dba Awesome Tires & Wheels and Chad Simons
Case ID No. 47869
Reg. Ent. Reference No. RN106912090
Media Violation No. Municipal Solid Waste
 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				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

Economic benefit included in violation no. 1.

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 \$0

TOTAL \$0

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PENDING Compliance History Report for CN603664939, RN106912090, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603664939, Lee Ann Potter **Classification:** SATISFACTORY **Rating:** 22.50

Regulated Entity: RN106912090, Awesome Tires & Wheels **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 2105 FM RD 1431 MARBLE FALLS, TX 78654-4756, BURNET COUNTY

TCEQ Region: REGION 11 - AUSTIN

ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R11106912090

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: October 21, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: October 21, 2008 to October 21, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Mike Pace **Phone:** (817) 588-5933

Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, 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

Components (Multimedia) for the Site Are Listed in Sections A - J

- A. Final Orders, court judgments, and consent decrees:**
N/A
- B. Criminal convictions:**
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.):**
A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.
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

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN604642587, RN106912090, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN604642587, Chad Simons **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN106912090, Awesome Tires & Wheels **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 2105 FM 1431 MARBLE FALLS, TX 78654-4756, BURNET COUNTY

TCEQ Region: REGION 11 - AUSTIN

ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R11106912090

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: August 11, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: October 21, 2008 to October 21, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Mike Pace **Phone:** (817) 588-5933

Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, 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

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

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.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LEE ANN POTTER DBA
AWESOME TIRES & WHEELS,
AND CHAD SIMONS;
RN106912090**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-1993-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 respondents. The respondents made the subject of this Order are Lee Ann Potter d/b/a Awesome Tires & Wheels, and Chad Simons ("Respondents").

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

FINDINGS OF FACT

1. Respondents own and/or operate a used tire retail and transporting facility located at 2105 Farm-to-Market Road 1431 in Marble Falls, Burnet County, Texas (the "Facility"). The Facility contains and/or involves the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on August 15, 2013, a TCEQ Central Office investigator documented that Respondents:
 - a. Failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers, or in enclosed or lockable containers. Specifically, approximately 668 scrap tires were stored on the ground at the Facility; and
 - b. Failed to obtain a tire transporter registration prior to transporting used and/or scrap tires.
3. The Executive Director recognizes that Respondents obtained a valid tire transporter registration on October 29, 2013.
4. 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 Lee Ann Potter d/b/a Awesome Tires & Wheels, and Chad Simons" (the "EDFARP") in the TCEQ Chief Clerk's office on October 28, 2014.
5. By letter dated October 28, 2014, sent to each Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondents with notice of the EDFARP. According to the return receipt "green cards," each Respondent received notice of the EDFARP on October 29, 2014, as evidenced by the signature on the cards.

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

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondents failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers, or in enclosed or lockable containers, in violation of 30 TEX. ADMIN. CODE § 328.60(a).
3. As evidenced by Finding of Fact No. 2.b., Respondents failed to obtain a tire transporter registration prior to transporting used and/or scrap tires, in violation of 30 TEX. ADMIN. CODE § 328.57(c)(1).
4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served each Respondent with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
5. As evidenced by Finding of Fact No. 6, Respondents 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 Respondents and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of fifteen thousand dollars (\$15,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. 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. Respondents are jointly and severally assessed an administrative penalty in the amount of fifteen thousand dollars (\$15,000.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' 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: Lee Ann Potter d/b/a Awesome Tires & Wheels and Chad Simons; Docket No. 2013-1993-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. Respondents shall undertake the following technical requirements:
- a. Immediately upon the effective date of this Order, Respondents shall cease accepting any additional used and/or scrap tires and/or tire pieces at the Facility until such time as the proper registration is obtained, in accordance with 30 TEX. ADMIN. CODE § 328.60.
 - b. Within 30 days after the effective date of this Order, Respondents shall obtain a scrap tire site registration for storage and processing of scrap tires or remove all used and/or scrap tires and/or tire pieces from the Facility and dispose of them at an authorized facility, in accordance with 30 TEX. ADMIN. CODE § 328.60.
 - c. Within 45 days after the effective date of this Order, Respondents shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b. The certifications shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondents, 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."

The written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

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

and:

David Mann, Waste Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
Enforcement Division, MC R11
PO Box 13087
Austin TX 78711-3087

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are 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 Respondents fail 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, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
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 Respondents if the Executive Director determines that Respondents have 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 fully executed 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 MEAGHAN M. BAILEY

STATE OF TEXAS

§

COUNTY OF TRAVIS

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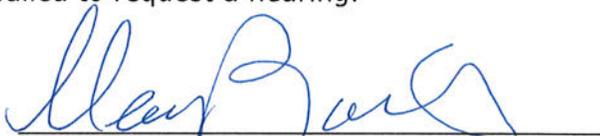
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"My name is Meaghan M. Bailey. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's 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 Lee Ann Potter d/b/a Awesome Tires & Wheels and Chad Simons" (the "EDFARP") was filed in the TCEQ Chief Clerk's office on October 28, 2014.

The EDFARP was mailed to each Respondent's last known address on October 28, 2014, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green cards," each Respondent received notice of the EDFARP on October 29, 2014, as evidenced by the signatures on the cards.

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



Meaghan M. Bailey, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Meaghan M. Bailey, 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.

Subscribed and sworn to before me on this 20th day of November, A.D. 2014.



Notary Public, State of Texas