

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 48749
William Robert Rutherford and Dan Howard Smith dba Tire Shop
RN106714421
Docket No. 2014-0802-MSW-E

Order Type:

Default Order

Media:

MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

13380 West State Highway 36, Temple, Bell County

Type of Operation:

tire repair shop

Other Significant Matters:

Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third-Parties: None

Texas Register Publication Date: January 16, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: \$16,250

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$16,250

Compliance History Classifications:

Person/CN – Satisfactory (Both Respondents)
Site/RN – Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: March 14, 2014
Date(s) of NOV(s): N/A
Date(s) of NOE(s): March 27, 2014

Violation Information

1. Failed to use a registered transporter to transport scrap tires or scrap tire pieces to an authorized facility and failed to prevent the unauthorized disposal of municipal solid waste ("MSW") [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 on-site [30 TEX. ADMIN. CODE § 328.56(c)].
3. Failed to obtain a registration to process scrap tires [30 TEX. ADMIN. CODE § 328.63(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
None

Technical Requirements:

1. Immediately, cease transporting any additional tires or scrap tire pieces to unauthorized facilities.
2. Within 30 days:
 - i. Develop and implement procedures to ensure that all scrap tires or scrap tire pieces are transported by a registered transporter to an authorized facility;
 - ii. Begin using manifests to document the removal and management of all scrap tires generated on-site; and
 - iii. Either obtain a scrap tire management registration for the storage, transportation, and processing of scrap tires, or remove all MSW, including scrap tires, and dispose of it at an authorized facility.
3. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: October 27, 2014
Date Green Card(s) Signed: October 29, 2014 (Rutherford); November 8, 2014 (Smith)
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Steven M. Fishburn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Steven Van Landingham, Enforcement Division, (512) 239-5717

TCEQ Regional Contact: David Mann, Waco Regional Office, (254) 761-3002

Respondent Contact: William Robert Rutherford, 16801 Cowan Road, Moody, Texas 76557;
Dan Howard Smith, 11210 Berry Road, Moody, Texas 76557

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	19-May-2014		
	PCW	19-Sep-2014	Screening	28-May-2014
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	William Robert Rutherford and Dan Howard Smith dba Tire Shop
Reg. Ent. Ref. No.	RN106714421
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	48749	No. of Violations	3
Docket No.	2014-0802-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steven Van Landingham
		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	\$16,250
---	-------------------	----------

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
---------------------------	------------------	--------------------------------	-----

Notes: No adjustment for compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
--------------------	----	------------------	-------------------	-----

Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
--	-------------------	-----

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

Total EB Amounts: \$1,048
 Approx. Cost of Compliance: \$12,633
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$16,250
-----------------------------	-----------------------	----------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$16,250
-----------------------------	----------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$16,250
-----------------------------------	-------------------------------	----------

DEFERRAL	0.0%	Reduction	Adjustment	\$0
-----------------	------	-----------	-------------------	-----

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.

PAYABLE PENALTY	\$16,250
------------------------	----------

Screening Date 28-May-2014

Docket No. 2014-0802-MSW-E

PCW

Respondent William Robert Rutherford and Dan Howard Smith

Policy Revision 4 (April 2014)

Case ID No. 48749

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106714421

Media [Statute] Municipal Solid Waste

Enf. Coordinator Steven Van Landingham

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 judgments 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 28-May-2014 **Docket No.** 2014-0802-MSW-E **PCW**
Respondent William Robert Rutherford and Dan Howard Smith dba Tire Shop *Policy Revision 4 (April 2014)*
Case ID No. 48749 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN106714421
Media [Statute] Municipal Solid Waste
Enf. Coordinator Steven Van Landingham

Violation Number

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 or scrap tire pieces to an authorized facility and failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 5,400 scrap tires were transported from the Facility without a scrap tire transporter registration and disposed of at unauthorized facilities.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

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

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

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 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

Three monthly events are recommended based on documentation of the violation during the March 14, 2014 investigation date to the May 28, 2014 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 Respondents do 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 William Robert Rutherford and Dan Howard Smith dba Tire Shop
Case ID No. 48749
Reg. Ent. Reference No. RN106714421
Media Violation No. 1 Municipal Solid Waste

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	22-Mar-2013	15-Dec-2014	1.73	\$87	n/a	\$87
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)	\$133	22-Mar-2013	15-Dec-2014	1.73	\$12	n/a	\$12

Notes for DELAYED costs
 Estimated cost to develop and implement procedures to ensure that all scrap tires or scrap tire pieces are transported by a registered transporter to an authorized facility. Estimated cost to properly remove all tires from the Site and dispose of them at an authorized facility. The date required is the initial 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 \$1,133

TOTAL \$98

Screening Date 28-May-2014

Docket No. 2014-0802-MSW-E

PCW

Respondent William Robert Rutherford and Dan Howard Smith dba Tire Shop

Policy Revision 4 (April 2014)

Case ID No. 48749

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106714421

Media [Statute] Municipal Solid Waste

Enf. Coordinator Steven Van Lindingham

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 \$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 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

75 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,250

One single event is recommended.

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 Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$124

Violation Final Penalty Total \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

Economic Benefit Worksheet

Respondent William Robert Rutherford and Dan Howard Smith dba Tire Shop
Case ID No. 48749
Reg. Ent. Reference No. RN106714421
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	\$1,500	22-Mar-2013	15-Nov-2014	1.65	\$124	n/a	\$124
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to use manifests to document the removal and management of all scrap tires generated on-site. The date required is the initial 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 \$1,500

TOTAL \$124

Screening Date 28-May-2014 **Docket No.** 2014-0802-MSW-E **PCW**
Respondent William Robert Rutherford and Dan Howard Smith dba Tire Shop *Policy Revision 4 (April 2014)*
Case ID No. 48749 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN106714421
Media [Statute] Municipal Solid Waste
Enf. Coordinator Steven Van Landingham

Violation Number

Rule Cite(s)

Violation Description Failed to obtain a registration to process scrap tires. Specifically, the Respondents have been processing scrap tires without authorization.

Base Penalty

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="X"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5.0%"/>

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	<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

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

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 William Robert Rutherford and Dan Howard Smith dba Tire Shop
Case ID No. 48749
Reg. Ent. Reference No. RN106714421
Media Violation No. Municipal Solid Waste
 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$10,000	22-Mar-2013	15-Nov-2014	1.65	\$826	n/a	\$826
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to obtain a scrap tire management registration for the storage, transportation and processing of scrap tires. The date required is the initial 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 \$826

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 CN604288407, RN106714421, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN604288407, William Robert Rutherford **Classification:** SATISFACTORY **Rating:** 12.00

Regulated Entity: RN106714421, Tire Shop **Classification:** SATISFACTORY **Rating:** 12.00

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 14 - Other

Location: Located behind Lake Shore Store and Baithouse at 13380 W State Highway 36 Temple, Texas, Bell County

TCEQ Region: REGION 09 - WACO

ID Number(s):

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

Date Compliance History Report Prepared: May 28, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 28, 2009 to May 28, 2014

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Steven Van Landingham

Phone: (512) 239-5717

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 CN603663212, RN106714421, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603663212, Dan Howard Smith
Classification: SATISFACTORY **Rating:** 12.00

Regulated Entity: RN106714421, Tire Shop
Classification: SATISFACTORY **Rating:** 12.00

Complexity Points: 0
Repeat Violator: NO

CH Group: 14 - Other

Location: Located behind Lake Shore Store and Baithouse at 13380 W State Highway 36 Temple, Texas, Bell County

TCEQ Region: REGION 09 - WACO

ID Number(s):

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

Date Compliance History Report Prepared: May 28, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 28, 2009 to May 28, 2014

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Steven Van Landingham

Phone: (512) 239-5717

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
WILLIAM ROBERT
RUTHERFORD AND
DAN HOWARD SMITH
DBA TIRE SHOP;
RN106714421**

§
§
§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2014-0802-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 respondents. The respondents made the subject of this Order are William Robert Rutherford and Dan Howard Smith dba Tire Shop ("Respondents").

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

FINDINGS OF FACT

1. Respondents own and operate a tire repair shop located at 13380 West State Highway 36 in Temple, Bell 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 March 14, 2014, an investigator documented that Respondents:
 - a. Failed to use a registered transporter to transport scrap tires or scrap tire pieces to an authorized facility and failed to prevent the unauthorized disposal of MSW. Specifically, approximately 5,400 scrap tires were transported from the Facility without a scrap tire transporter registration and disposed of at unauthorized facilities;
 - b. Failed to use manifests to document the removal and management of all scrap tires generated on-site; and
 - c. Failed to obtain a registration to process scrap tires.
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 William Robert Rutherford and Dan Howard Smith dba Tire Shop" (the "EDPRP") in the TCEQ Chief Clerk's office on October 27, 2014.
4. By letters dated October 27, 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 EDPRP. According to the return receipt "green cards," William Robert Rutherford received notice of the EDPRP on October 29, 2014, and Dan Howard Smith received notice of the EDPRP on November 8, 2014, as evidenced by the signatures on the cards.

5. More than 20 days have elapsed since each Respondent received notice of the EDPRP. 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 use a registered transporter to transport scrap tires or scrap tire pieces to an authorized facility 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., Respondents failed to use manifests to document the removal and management of all scrap tires generated on-site, in violation of 30 TEX. ADMIN. CODE § 328.56(c).
4. As evidenced by Finding of Fact No. 2.c., Respondents failed to obtain a registration to process scrap tires, in violation of 30 TEX. ADMIN. CODE § 328.63(c).
5. As evidenced by Findings of Fact Nos. 3 and 4, the Executive Director timely served each Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104.
6. As evidenced by Finding of Fact No. 5, 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.
7. 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.
8. An administrative penalty in the amount of sixteen thousand two hundred fifty dollars (\$16,250.00) 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. Respondents are assessed an administrative penalty in the amount of sixteen thousand two hundred fifty dollars (\$16,250.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' compliance with all the requirements set forth in this Order resolve only 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 violations which are not raised here.
2. The 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 TCEQ and shall be sent with the notation "Re: William Robert Rutherford and Dan Howard Smith dba Tire Shop; Docket No. 2014-0802-MSW-E" to:

Financial Administration Division, Revenue Operations 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, cease transporting any additional tires or scrap tire pieces to unauthorized facilities, in accordance with 30 TEX. ADMIN. CODE § 328.56(b).
 - b. Within 30 days after the effective date of this Order:
 - i. Develop and implement procedures to ensure that all scrap tires or scrap tire pieces are transported by a registered transporter to an authorized facility, in accordance with 30 TEX. ADMIN. CODE § 328.56(b);
 - ii. Begin using manifests to document the removal and management of all scrap tires generated on-site, in accordance with 30 TEX. ADMIN. CODE § 328.56(c); and
 - iii. Either obtain a scrap tire management registration for the storage, transportation, and processing of scrap tires, in accordance with 30 TEX. ADMIN. CODE § 328.63(c), or remove all MSW, including scrap tires, and dispose of it at an authorized facility.
 - c. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a., 3.b.i., 3.b.ii., and 3.b.iii. The certification 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 certification 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
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Ave, Suite 2500
Waco, Texas 76710-7826

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 Respondent 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 STEVEN M. FISHBURN

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

"My name is Steven M. Fishburn. 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 William Robert Rutherford and Dan Howard Smith dba Tire Shop" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 27, 2014.

The EDPRP was mailed to each Respondent's last known address on October 27, 2014, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green cards," William Robert Rutherford received notice of the EDPRP on October 29, 2014, and Dan Howard Smith received notice of the EDPRP on November 8, 2014, as evidenced by the signatures on the cards.

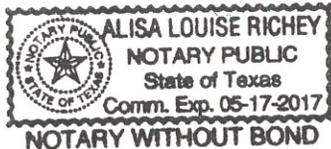
More than 20 days have elapsed since each Respondent received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing."



Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, 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.

Subscribed and sworn to before me on this 16th day of December, A.D. 2014.



Notary Public, State of Texas