

**EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 43562**  
**Javier Moreno DBA On Site Tire Disposal and DBA Magnolia Truck Tire Service**  
**RN104967989 and RN106228984**  
**Docket No. 2012-0367-MSW-E**

**Order Type:**

Agreed Order

**Media:**

MSW – Municipal Solid Waste

**Small Business:**

Yes

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

199 2nd Street, Montgomery, Montgomery County (“Montgomery Tire Facility”);  
13615 Farm-to-Market 2432 Road, Willis, Montgomery County (“Willis Site”)

**Type of Operation:**

Montgomery Tire Facility: scrap tire processing and transport facility  
Willis Site: unauthorized municipal solid waste disposal site

**Other Significant Matters:**

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

**Texas Register Publication Date:** March 13, 2015

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$33,500

**Total Paid to General Revenue:** \$950

**Total Due to General Revenue:** \$32,550

Payment Plan: 35 payments of \$930 each

**Supplemental Environmental Project (“SEP”) Conditional Offset:**

N/A

**Compliance History Classifications:**

Person/CN – Unclassified  
Site/RN – Unclassified (Both locations)

**Major Source:** No (PCW 1); Yes (PCW 2)

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2002

**Investigation Information**

**Complaint Date(s):** August 30, 2011  
*Complaint Information:* Alleged that tires from the Montgomery Tire Facility were being disposed of at the Willis Site, and that the Willis Site was overgrown with rats, mice, and snakes in and around the area.

**Date(s) of Investigation:** September 12, 2011

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

**Date(s) of NOE(s):** January 12, 2012

**Violation Information**

Montgomery Tire Facility:

1. Failed to ensure that used or scrap tires or tire pieces are transported to an authorized facility (approx. 1,315 scrap tires) [30 TEX. ADMIN. CODE § 328.57(c)(3)].
2. Failed to record the end location and ensure the number and type of used or scrap tires removed and transported were recorded on manifests [30 TEX. ADMIN. CODE § 328.58(b)].

Willis Site:

3. Failed to prevent the unauthorized disposal of MSW (approx. 1,560 cubic yards of used and scrap tires and tire pieces were disposed of at the Site) [30 TEX. ADMIN. CODE § 330.15(c)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Immediately cease transporting to and disposing of any additional MSW, including but not limited to used or scrap tires or scrap tire pieces, at the Site.
2. Within 30 days, develop and implement procedures to ensure manifests contain current information, and are accurately completed and maintained.
3. Within 60 days, remove all MSW, including used or scrap tires or scrap tire pieces from the Willis Site to an authorized facility.
4. Within 75 days, submit written certification to demonstrate compliance.

**Litigation Information**

**Date Petition(s) Filed:** November 14, 2014; January 7, 2015

**Date Answer Filed:** N/A

**Settlement Date:** January 15, 2015

**Contact Information**

**TCEQ Attorneys:** Ryan Rutledge, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Rudy Calderon, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Danielle Porras, Enforcement Division, (813) 767-3682

**TCEQ Regional Contact:** Jason Ybarra, Houston Regional Office, (713) 767-3500

**Respondent Contact:** Javier Moreno, 13615 FM 2432 Road, Willis, Texas 77378

**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>	17-Jan-2012		
	<b>PCW</b>	29-Sep-2014	<b>Screening</b>	24-Jan-2012
			<b>EPA Due</b>	

**RESPONDENT/FACILITY INFORMATION**

<b>Respondent</b>	Javier Moreno dba On Site Tire Disposal (Facility)		
<b>Reg. Ent. Ref. No.</b>	RN104967989		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor

**CASE INFORMATION**

<b>Enf./Case ID No.</b>	43562	<b>No. of Violations</b>	2
<b>Docket No.</b>	2012-0367-MSW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Danielle Porras
		<b>EC's Team</b>	Enforcement Team 7
<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>	\$8,500
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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
Notes	No adjustment for compliance history.		
<b>Culpability</b>	No 0.0% Enhancement	<b>Subtotal 4</b>	\$0
Notes	The Respondent does not meet the culpability criteria.		
<b>Good Faith Effort to Comply Total Adjustments</b>		<b>Subtotal 5</b>	\$0
<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$43	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$625		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$8,500
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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.

Notes		<b>Final Penalty Amount</b>	\$8,500
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$8,500
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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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction)

Notes	Deferral not offered for non-expedited settlement.		
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<b>PAYABLE PENALTY</b>	\$8,500
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<b>Screening Date</b>	24-Jan-2012	<b>Docket No.</b>	2012-0367-MSW-E	<b>PCW</b>
<b>Respondent</b>	Javier Moreno dba On Site Tire Disposal (Facility)			Policy Revision 2 (September 2002)
<b>Case ID No.</b>	43562			PCW Revision October 30, 2008
<b>Reg. Ent. Reference No.</b>	RN104967989			
<b>Media [Statute]</b>	Municipal Solid Waste			
<b>Enf. Coordinator</b>	Danielle Porras			

### Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <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 Adjustment Percentage (Subtotals 2, 3, & 7)**

**Screening Date** 24-Jan-2012 **Docket No.** 2012-0367-MSW-E **PCW**

**Respondent** Javier Moreno dba On Site Tire Disposal (Facility) *Policy Revision 2 (September 2002)*  
**Case ID No.** 43562 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN104967989  
**Media [Statute]** Municipal Solid Waste  
**Enf. Coordinator** Danielle Porras

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 328.57(c)(3)

**Violation Description** Failed to ensure that used or scrap tires or tire pieces are transported to an authorized facility. Specifically, approximately 1,315 scrap tires were transported to an unauthorized facility.

**Base Penalty** \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			x	10%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes

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

**Adjustment** \$9,000

\$1,000

Violation Events

Number of Violation Events 2 134 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$2,000

Two quarterly events are recommended from the September 12, 2011 investigation date to the January 24, 2012 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** \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

**Estimated EB Amount** \$21

**Violation Final Penalty Total** \$2,000

**This violation Final Assessed Penalty (adjusted for limits)** \$2,000

## Economic Benefit Worksheet

**Respondent** Javier Moreno dba On Site Tire Disposal (Facility)  
**Case ID No.** 43562  
**Reg. Ent. Reference No.** RN104967989  
**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				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)	\$300	21-Apr-2011	1-Sep-2012	1.37	\$21	n/a	\$21

**Notes for DELAYED costs**  
 Estimated cost to ensure used or scrap tires and tire pieces are transported to an authorized facility. The date required is the first documented manifest 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>	\$300	<b>TOTAL</b>	\$21
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Screening Date 24-Jan-2012 Docket No. 2012-0367-MSW-E PCW

Respondent Case ID No. 43562  
 Reg. Ent. Reference No. RN104967989  
 Media [Statute] Municipal Solid Waste  
 Enf. Coordinator Danielle Porras

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 328.58(b)

Violation Description

Failed to record the end location and ensure the number and type of used or scrap tires removed and transported were recorded on manifests. Specifically, manifest numbers 31021, 31023, 31024, 31028, 31037, 31203, 31208, 31217, 31221, 31246, 31247, 31248, and 31254 did not identify the end location of 1,315 scrap tires. Manifest numbers 31021, 31023, 31028, 31247 and 31248 did not identify the number and type of scrap tires removed and transported.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
		x		5%

Matrix Notes

More than 30% of the rule requirement was not met.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 13 91 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$6,500

Thirteen single events are recommended (one for each manifest).

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 \$6,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$22

Violation Final Penalty Total \$6,500

This violation Final Assessed Penalty (adjusted for limits) \$6,500

## Economic Benefit Worksheet

**Respondent** Javier Moreno dba On Site Tire Disposal (Facility)  
**Case ID No.** 43562  
**Reg. Ent. Reference No.** RN104967989  
**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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$325	21-Apr-2011	1-Sep-2012	1.37	\$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 completely fill out manifests (\$25 per occurrence). The date required is the first documented manifest 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)**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$325

**TOTAL**

\$22

# Compliance History Report

CH 1 of 2

Customer/Respondent/Owner-Operator:	CN600743918	Moreno, Javier	Classification:	Rating:
Regulated Entity:	RN104967989	On Site Tire Disposal	Classification:	Site Rating:
ID Number(s):	TIRES	REGISTRATION	6200322	
Location:	199 2ND ST, MONTGOMERY, TX, 77316			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	March 15, 2012			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 15, 2007 to March 15, 2012			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Elvia Maske Phone: (512) 239 - 0789

## 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. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: N/A Repeat Violator: N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 01/12/2012 (963826)
  - 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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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	<b>Assigned</b>	17-Jan-2012	<b>Screening</b>	24-Jan-2012	<b>EPA Due</b>	
	<b>PCW</b>	29-Sep-2014				

**RESPONDENT/FACILITY INFORMATION**

<b>Respondent</b>	Javier Moreno dba Magnolia Truck Tire Service (Site)		
<b>Reg. Ent. Ref. No.</b>	RN106228984		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Major

**CASE INFORMATION**

<b>Enf./Case ID No.</b>	43562	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-0367-MSW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Danielle Porras
		<b>EC's Team</b>	Enforcement Team 7
<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>	\$25,000
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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.

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
Notes	No adjustment for compliance history.		
<b>Culpability</b>	No 0.0% Enhancement	<b>Subtotal 4</b>	\$0
Notes	The Respondent does not meet the culpability criteria.		
<b>Good Faith Effort to Comply Total Adjustments</b>		<b>Subtotal 5</b>	\$0
<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$1,369	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$17,846		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$25,000
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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.

Notes	
	<b>Final Penalty Amount</b> \$25,000

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$25,000
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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.)

Notes	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$25,000
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<b>Screening Date</b>	24-Jan-2012	<b>Docket No.</b>	2012-0367-MSW-E	<b>PCW</b>
<b>Respondent</b>	Javier Moreno dba Magnolia Truck Tire Service (Site)			Policy Revision 2 (September 2002)
<b>Case ID No.</b>	43562			PCW Revision October 30, 2008
<b>Reg. Ent. Reference No.</b>	RN106228984			
<b>Media [Statute]</b>	Municipal Solid Waste			
<b>Enf. Coordinator</b>	Danielle Porras			

### Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <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 Adjustment Percentage (Subtotals 2, 3, & 7)**

<b>Screening Date</b>	24-Jan-2012	<b>Docket No.</b>	2012-0367-MSW-E	<b>PCW</b>
<b>Respondent</b>	Javier Moreno dba Magnolia Truck Tire Service (Site)			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	43562			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN106228984			
<b>Media [Statute]</b>	Municipal Solid Waste			
<b>Enf. Coordinator</b>	Danielle Porras			

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<input type="text"/>	x	<input type="text"/>	<b>Percent</b> <input type="text" value="50%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

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

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

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

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Javier Moreno dba Magnolia Truck Tire Service (Site)  
**Case ID No.** 43562  
**Reg. Ent. Reference No.** RN106228984  
**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				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$17,846	21-Apr-2011	1-Nov-2012	1.53	\$1,369	n/a	\$1,369
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly remove and dispose of MSW at an authorized disposal site. The date required is the first documented manifest 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 \$17,846

**TOTAL** \$1,369

# Compliance History Report

CH 2 of 2

Customer/Respondent/Owner-Operator:	CN600743918	Moreno, Javier	Classification:	Rating:
Regulated Entity:	RN106228984	Magnolia Truck Tire Service	Classification:	Site Rating:
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER		455120148	
Location:	13615 FM 2432 RD, WILLIS, TX, 77378			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	March 15, 2012			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 12, 2007 to March 12, 2012			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Elvia Maske Phone: (512) 239 - 0789

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? NO
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If **YES**, who is the current owner/operator? N/A
4. If **YES**, who was/were the prior owner(s)/operator(s)? N/A
5. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: N/A Repeat Violator: N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



<b>IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING JAVIER MORENO DBA ON SITE TIRE DISPOSAL AND DBA MAGNOLIA TRUCK TIRE SERVICE; RN104967989 AND RN106228984</b>	<b>§ § § § § § §</b>	<b>BEFORE THE  TEXAS COMMISSION ON  ENVIRONMENTAL QUALITY</b>
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## AGREED ORDER

DOCKET NO. 2012-0367-MSW-E

### I. JURISDICTION AND STIPULATIONS

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Javier Moreno dba On Site Tire Disposal and dba Magnolia Truck Tire Service ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent together stipulate that:

1. Respondent owns and operates a scrap tire processing and transport facility at 199 2nd Street in Montgomery, Montgomery County, Texas (the "Facility"); and owns and operates an unauthorized municipal solid waste ("MSW") disposal site at 13615 Farm-to-Market 2432 Road in Willis, Montgomery County, Texas (the "Site"). The Facility and Site involve or involved the management of MSW as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. The Executive Director and Respondent agree that TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.051 and 7.070, and that Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of thirty-three thousand five hundred dollars (\$33,500.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid nine hundred fifty dollars (\$950.00) of the penalty. The remaining amount of thirty-two thousand five hundred fifty dollars (\$32,550.00) shall be paid in thirty-five (35) monthly payments of nine hundred thirty dollars (\$930.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Order.

5. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
6. The Executive Director and Respondent agree on a settlement of the matters addressed in this Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
7. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions contained in this Order.
8. 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.
9. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

1. During an investigation conducted at the Facility on September 12, 2011, an investigator documented that Respondent:
  - a. Failed to ensure that used or scrap tires or tire pieces are transported to an authorized facility, in violation of 30 TEX. ADMIN. CODE § 328.57(c)(3). Specifically, approximately 1,315 scrap tires were transported to an unauthorized facility.
  - b. Failed to record the end location and ensure the number and type of used or scrap tires removed and transported were recorded on manifests, in violation of 30 TEX. ADMIN. CODE § 328.58(b). Specifically, manifest numbers 31021, 31023, 31024, 31028, 31037, 31203, 31208, 31217, 31221, 31246, 31247, 31248, and 31254 did not identify the end location of 1,315 scrap tires. Manifest numbers 31021, 31023, 31028, 31247 and 31248 did not identify the number and type of scrap tires removed and transported.
2. During an investigation conducted at the Site on September 12, 2011, an investigator documented that Respondent failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c). Specifically, approximately 1,560 cubic yards of used and scrap tires and tire pieces were disposed of at the Site.

## **III. DENIALS**

Respondent generally denies each Allegation in Section II.

## **IV. ORDERING PROVISIONS**

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty as set forth in Section I, Paragraph 4. The payment of this penalty and Respondent's compliance with all of the requirements set forth in this Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Re: Javier Moreno dba On Site Tire Disposal and dba Magnolia Truck Tire Service, Docket No. 2012-0367-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

2. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, cease transporting to and disposing of any additional MSW, including used or scrap tires or scrap tire pieces, at the Site;
  - b. Within 30 days after the effective date of this Order, develop and implement procedures to ensure manifests contain current information, and are accurately completed and maintained, in accordance with 30 TEX. ADMIN. CODE § 328.58;
  - c. Within 60 days after the effective date of this Order, remove all MSW, including used or scrap tires or scrap tire pieces from the Site to an authorized facility; and
  - d. Within 75 days after the effective date of this Order, submit written certification, to demonstrate compliance with Ordering Provisions Nos. 2.a. through 2.c. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, 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:

Jason Ybarra, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. All relief not expressly granted in this Order is denied.

4. The duties and provisions imposed by 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 and Site operations referenced in this Order.
5. 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.
6. 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. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Order is the date of hand delivery of the fully executed Order to Respondent, or three days after the date on which the Commission mails a copy of the fully executed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of the fully executed Order to each of the parties.

**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this Order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature - Javier Moreno  
13615 FM 2432  
Willis, TX 77378

  
\_\_\_\_\_  
Date

If mailing address has changed, please check this box and provide the new address below:

\_\_\_\_\_