

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 48521  
Lecure Donald d/b/a A-Original Tire Man  
RN106823826  
Docket No. 2014-0503-MSW-E

**Order Type:**

Default Order (SOAH preliminary hearing)

**Media:**

Municipal Solid Waste ("MSW")

**Small Business:**

Yes

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

206 Gilmer Street, Killeen, Bell County

**Type of Operation:**

tire service facility

**Other Significant Matters:**

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

**Texas Register Publication Date:** May 8, 2015

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$11,812

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

**Total Due to General Revenue:** \$11,812

**Compliance History Classifications:**

Person/CN – Satisfactory  
Site/RN – Satisfactory

**Major Source:** Yes

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Lecure Donald d/b/a A-Original Tire Man**

RN106823826

Docket No. 2014-0503-MSW-E

**Investigation Information**

**Complaint Date(s):** June 14, 2013  
Alleged that Respondent was storing more than 500 tires at the Facility and was not a registered tire generator.

**Date(s) of Investigation:** February 26, 2014

**Date(s) of NOV(s):** August 2, 2013

**Date(s) of NOE(s):** May 20, 2014

**Violation Information**

Failed to prevent the unauthorized transportation and disposal of MSW (approx. 5,500 scrap tires) [30 TEX. ADMIN. CODE §§ 328.56(b) and 330.9(a)].

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

None

**Technical Requirements:**

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

**Litigation Information**

**Date Petition(s) Filed:** August 27, 2014; November 3, 2014

**Date Green Card(s) Signed:** August 29, 2014; November 4, 2014

**Date Answer(s) Filed:** September 19, 2014

**SOAH Referral Date:** December 9, 2014

**Hearing Date(s):**  
Preliminary hearing: January 15, 2015 (defaulted)

**Contact Information**

**TCEQ Attorneys:** David A. Terry, 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, (512) 339-2929

**Respondent Contact:** Lecure Donald, 2009 Stardust Street, Killeen, Texas 76543-6721

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	26-Mar-2014		
	<b>PCW</b>	23-Oct-2014	<b>Screening</b>	3-Apr-2014
			<b>EPA Due</b>	

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Lecure Donald dba A-Original Tire Man		
<b>Reg. Ent. Ref. No.</b>	RN106823826		
<b>Facility/Site Region</b>	9-Waco	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	48521	<b>No. of Violations</b>	1
<b>Docket No.</b>	2014-0503-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>	Steven Van Landingham
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$11,250
---	-------------------	----------

## 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>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$562
---------------------------	------------------	--------------------------------	-------

<b>Notes</b>	Enhancement for one NOV with the same or similar violations.
--------------	--

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
--------------------	----	------------------	-------------------	-----

<b>Notes</b>	The Respondents do 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	\$68	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,000	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$11,812
-----------------------------	-----------------------	----------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	
---	------	-------------------	--

Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
--------------	--

<b>Final Penalty Amount</b>	\$11,812
-----------------------------	----------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$11,812
-----------------------------------	-------------------------------	----------

<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
-----------------	------	-----------	-------------------	-----

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

<b>Notes</b>	Deferral not offered for non-expedited settlement.
--------------	--

<b>PAYABLE PENALTY</b>	\$11,812
------------------------	----------

**Screening Date** 3-Apr-2014

**Docket No.** 2014-0503-MSW-E

**PCW**

**Respondent** Lecure Donald dba A-Original Tire Man

*Policy Revision 3 (September 2011)*

**Case ID No.** 48521

*PCW Revision August 3, 2011*

**Reg. Ent. Reference No.** RN106823826

**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> )	1	5%
	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**

Enhancement for one NOV with the same or similar violations.

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

**>> Final Compliance History Adjustment**

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

**Screening Date** 3-Apr-2014 **Docket No.** 2014-0503-MSW-E **PCW**  
**Respondent** Lecure Donald dba A-Original Tire Man *Policy Revision 3 (September 2011)*  
**Case ID No.** 48521 *PCW Revision August 3, 2011*  
**Reg. Ent. Reference No.** RN106823826  
**Media [Statute]** Municipal Solid Waste  
**Enf. Coordinator** Steven Van Landingham

**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"/>	<input checked="" type="checkbox"/>	<input type="text" value="15.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

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

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="checkbox"/>
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="checkbox"/>	(mark w th 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** Lecure Donald dba A-Original Tire Man  
**Case ID No.** 48521  
**Reg. Ent. Reference No.** RN106823826  
**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	14-Jun-2013	20-Oct-2014	1.35	\$68	n/a	\$68
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs** Estimated cost to implement procedures to ensure all scrap tires are transported by a registered transporter to a registered facility and to maintain manifests documenting the removal and management of all scrap tires generated at the 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 \$1,000

**TOTAL** \$68



# Compliance History Report

**PUBLISHED** Compliance History Report for CN604342725, RN106823826, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

<b>Customer, Respondent, or Owner/Operator:</b>	CN604342725, Lecure Donald	<b>Classification:</b> SATISFACTORY	<b>Rating:</b> 26.00
<b>Regulated Entity:</b>	RN106823826, A-ORIGINAL TIRE MAN	<b>Classification:</b> SATISFACTORY	<b>Rating:</b> 26.00
<b>Complexity Points:</b>	0	<b>Repeat Violator:</b>	NO
<b>CH Group:</b>	14 - Other		
<b>Location:</b>	206 GILMER ST KILLEEN, TX 76541-5040, BELL COUNTY		
<b>TCEQ Region:</b>	REGION 09 - WACO		
<b>ID Number(s):</b>	MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R09106823826		

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

**Date Compliance History Report Prepared:** April 03, 2014

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** April 03, 2009 to April 03, 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.

1 Date: 08/02/2013 (1099787)

Classification: Moderate

Self Report? NO

Citation: 30 TAC Chapter 328, SubChapter F 328.56(a)(1)

Description: Failure to obtain a registration number from the executive director prior to storing more than 500 scrap tires.

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 328, SubChapter F 328.56(b)		
Description:	Failure to ensure that scrap tires or scrap tire pieces are transported by a registered transporter to an authorized facility		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 328, SubChapter F 328.56(c)		
Description:	Failure to use manifests or other records to document the removal and management of scrap tires		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 328, SubChapter F 328.56(d)(2) 30 TAC Chapter 328, SubChapter F 328.60(a)		
Description:	Failure of a generator to store less than or equal to 500 scrap tires on the ground, or 2,000 scrap tires in trailers without obtaining a scrap tire storage registration		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 328, SubChapter F 328.56(d)(4)		
Description:	Failure to monitor tires stored outside for vectors and utilize appropriate vector control measures at least once every two weeks		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 328, SubChapter F 328.63(c)		
Description:	Failure to register as a scrap tire facility prior to processing scrap tires		
Self Report?	NO	Classification:	Minor
Citation:	40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)(1)		
Description:	Failure to clearly mark or label a used oil container with the words, "Used Oil"		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 330, SubChapter A 330.15(c)		
Description:	Failure to prevent the unauthorized disposal of municipal solid waste		

**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  
LECURE DONALD DBA  
A-ORIGINAL TIRE MAN;  
RN106823826**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2014-0503-MSW-E**

On \_\_\_\_\_, 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 respondent. The respondent made the subject of this Order is Lecure Donald d/b/a A-Original Tire Man ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a tire service facility located at 206 Gilmer Street in Killeen, Bell County, Texas (the "Facility"). The Facility contains and/or involves the management of municipal solid waste ("MSW"), including scrap tires, as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on February 26, 2014, an investigator documented that Respondent failed to prevent the unauthorized transportation and disposal of MSW. Specifically, approximately 5,500 scrap tires were transported from the Facility by an unauthorized transporter.
3. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Wesley Joseph Martin III and Donald Lecuer d/b/a A-Original Tire Man" (the "EDPRP") in the TCEQ Chief Clerk's office on August 27, 2014.
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 Wesley Joseph Martin III and Lecure Donald d/b/a A-Original Tire Man" (the "EDFARP") in the TCEQ Chief Clerk's office on November 3, 2014.
5. Respondent filed an answer requesting a hearing on September 19, 2014, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on December 9, 2014.
6. On December 18, 2014, the TCEQ Chief Clerk mailed notice of the January 15, 2015 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.
7. On January 15, 2015, the Administrative Law Judge ("ALJ") convened the preliminary hearing. Respondent failed to appear, and the Executive Director requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and

the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.

8. On January 16, 2015, the ALJ entered a finding that Respondent was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No. 1 so that TCEQ may dispose of this case on a default basis.

### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, Respondent failed to prevent the unauthorized transportation and disposal of MSW, in violation of 30 TEX. ADMIN. CODE §§ 328.56(b) and 330.9(a).
3. As evidenced by Finding of Fact No. 5, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
4. As evidenced by Finding of Fact No. 6, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.
5. As evidenced by Findings of Fact Nos. 7 and 8, Respondent failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within 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 eleven thousand eight hundred twelve dollars (\$11,812.00) 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. Respondent is assessed an administrative penalty in the amount of eleven thousand eight hundred twelve dollars (\$11,812.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's 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: Lecure Donald d/b/a A-Original Tire Man; Docket No. 2014-0503-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. Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order, Respondent shall:
  - i. Develop and implement procedures to ensure that all scrap tires or scrap tire pieces are transported by a registered transporter to an authorized scrap tire facility, in accordance with 30 TEX. ADMIN. CODE §§ 328.56 and 330.9; and
  - ii. Develop and implement procedures to ensure use of manifests to document the removal and management of all scrap tires generated at the Facility, in accordance with 30 TEX. ADMIN. CODE § 328.56.
- b. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a.i. and 3.a.ii. 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."

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:

Waste Section Manager  
Waco Regional Office  
Texas Commission on Environmental Quality  
6801 Sanger Avenue, 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 Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. 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 Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this 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 DAVID A. TERRY**

**STATE OF TEXAS**

§  
§  
§

**COUNTY OF TRAVIS**

"My name is David A. Terry. 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.

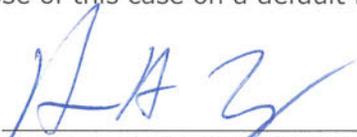
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Wesley Joseph Martin III and Donald Lecuer d/b/a A-Original Tire Man" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on August 27, 2014.

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 Wesley Joseph Martin III and Lecure Donald d/b/a A-Original Tire Man" (the "EDFARP") was filed in the TCEQ Chief Clerk's office on November 3, 2014.

Lecure Donald filed an answer requesting a hearing on September 19, 2014, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on December 9, 2014. On December 18, 2014, the TCEQ Chief Clerk mailed notice of the January 15, 2015 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Lecure Donald.

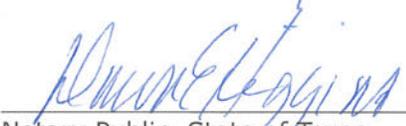
Lecure Donald failed to appear at the hearing on January 15, 2015. At that hearing, I requested that the ALJ enter a finding that Lecure Donald was served with proper notice of the hearing and the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the TCEQ for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, issued on January 16, 2015, so that TCEQ may dispose of this case on a default basis."

  
\_\_\_\_\_  
David A. Terry, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared David A. Terry, 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 8<sup>th</sup> day of April, A.D. 2015.

  
\_\_\_\_\_  
Notary Public, State of Texas

