

**Executive Summary – Enforcement Matter – Case No. 47984**  
**Juan Antonio Diaz d/b/a Tony's Tire Service and d/b/a Tony's Tire Shop**  
**RN105359392 AND RN106967490**  
**Docket No. 2013-2144-MSW**

**Order Type:**

Agreed Order

**Media:**

Municipal Solid Waste (MSW)

**Small Business:**

Yes

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

17115 Martinez Loyola Road, San Antonio, Bexar County (Tire Facility);  
13495 Somerset Road in Von Ormy, Bexar County (Transporter Facility)

**Type of Operation:**

tire processing facility and tire transporting business

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	Tire Transporter Registration No. 6200440
Interested Third-Parties:	None

**Texas Register Publication Date:** July 17, 2015

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$14,300

**Total Paid to General Revenue:** \$405

**Total Due to General Revenue:** \$13,895

Payment Plan: 35 payments of \$397 each

**Compliance History Classifications:**

Person/CN - Unsatisfactory  
Site/RN - Unclassified (Tire Facility); N/A (Transporter Facility)

**Major Source:** Yes

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 47984**  
**Juan Antonio Diaz d/b/a Tony's Tire Service and d/b/a Tony's Tire Shop**  
**RN105359392 AND RN106967490**  
**Docket No. 2013-2144-MSW**

**Investigation Information**

**Complaint Date(s):** August 14, 2013  
**Complaint Information:** Tire Facility - Alleged that there were a lot of tires on the ground, which was causing a mosquito problem, and that Respondent was not manifesting tires.

**Date(s) of Investigation:** September 12, 2013

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

**Date(s) of NOE(s):** November 19, 2013

**Violation Information**

1. Failed to ensure that used or scrap tires or tire pieces are transported to an authorized facility [30 TEX. ADMIN. CODE § 328.57(c)(3)].
2. Failed to obtain a scrap tire storage registration for the Tire Facility prior to storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers or in enclosed or lockable containers [30 TEX. ADMIN. CODE §§ 328.56, 328.59, and 328.60(a)].
3. Failed to document all used or scrap tires or tire pieces generated at, transported to, and/or removed from the Facilities by completing a manifest form [30 TEX. ADMIN. CODE § 328.58].
4. Failed to identify any vehicle or trailer used to transport used or scrap tires or tire pieces on both sides and the rear of the vehicle [30 TEX. ADMIN. CODE § 328.54(d)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**  
None

**Technical Requirements:**

1. Immediately cease accepting used and/or scrap tires at the Tire Facility until proper authorization is obtained.
2. Within 30 days:
  - a. Either:
    - i. Remove all used and/or scrap tires and /or tire pieces from the Tire Facility and dispose of them at an authorized facility; or
    - ii. Obtain a scrap tire storage and processing site registration for the Tire Facility.
  - b. Develop and implement procedures to ensure that used or scrap tires and/or tire pieces are transported to authorized facilities;
  - c. Develop and implement procedures to ensure manifests are completed and maintained for all used or scrap tires and/or tire pieces that are generated at, transported to, and/or removed from the Facilities; and
  - d. Properly identify all vehicles and/or trailers used to transport used or scrap tires or tire pieces.
3. Within 45 days submit written certification to demonstrate compliance.

**Executive Summary – Enforcement Matter – Case No. 47984**  
**Juan Antonio Diaz d/b/a Tony's Tire Service and d/b/a Tony's Tire Shop**  
**RN105359392 AND RN106967490**  
**Docket No. 2013-2144-MSW**

**Litigation Information**

**Date Petition(s) Filed:** July 28, 2014  
**Date Answer Filed:** August 18, 2014  
**SOAH Referral Date:** October 14, 2014  
**Hearing Date(s):**  
    Preliminary hearing: January 15, 2015 (waived)  
    Evidentiary hearing: May 21, 2105 (continued); July 2, 2015  
**Settlement Date:** May 6, 2015

**Contact Information**

**TCEQ Attorneys:** Jacquelyn Boutwell, Litigation Division, (512) 239-3400  
    Lena Roberts, Litigation Division, (512) 239-3400  
    Garrett Arthur, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Margarita Dennis, Enforcement Division, (817) 588-5892  
**TCEQ Regional Contact:** Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5700  
**Respondent Contact:** Juan Antonio Diaz, 13495 Somerset Road, Von Ormy, Texas, 78073  
**Respondent's Attorney:** Roger A. Perez, The Law Office of Roger A. Perez, 427 S. Saint Mary's Street, San Antonio, Texas, 78205

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# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	25-Nov-2013	<b>Screening</b>	27-Nov-2013	<b>EPA Due</b>	
	<b>PCW</b>	14-Apr-2015				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Juan Antonio Diaz dba Tony's Tire Service and dba Tony's Tire Shop		
<b>Reg. Ent. Ref. No.</b>	RN105359392 and RN106967490		
<b>Facility/Site Region</b>	13-San Antonio	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	47984	<b>No. of Violations</b>	4
<b>Docket No.</b>	2013-2144-MSW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Waste Tires	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Margarita Dennis
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$13,000**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** **10.0%** Enhancement **Subtotals 2, 3, & 7** **\$1,300**

<b>Notes</b>	Enhancement for unsatisfactory performer classification.
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**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

<b>Notes</b>	The Respondent does not meet the culpability criteria.
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**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$0**

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

Total EB Amounts	\$564	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$11,963	

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$14,300**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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**Final Penalty Amount** **\$14,300**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$14,300**

**DEFERRAL** **0.0%** Reduction **Adjustment** **\$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.
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**PAYABLE PENALTY** **\$14,300**

**Screening Date** 27-Nov-2013

**Docket No.** 2013-2144-MSW-E

**PCW**

**Respondent** Juan Antonio Diaz dba Tony's Tire Service and dba Tony's Tire Shop

*Policy Revision 3 (September 2011)*

**Case ID No.** 47984

*PCW Revision August 3, 2011*

**Reg. Ent. Reference No.** RN105359392 and RN106967490

**Media [Statute]** Waste Tires

**Enf. Coordinator** Margarita Dennis

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 0%

**>> Repeat Violator (Subtotal 3)**

N/A

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

Unsatisfactory Performer

**Adjustment Percentage (Subtotal 7)** 10%

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for unsatisfactory performer classification.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 10%

**>> Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 10%

**Screening Date** 27-Nov-2013 **Docket No.** 2013-2144-MSW-E **PCW**  
**Respondent** Juan Antonio Diaz dba Tony's Tire Service and dba Tony's Tire Shop *Policy Revision 3 (September 2011)*  
**Case ID No.** 47984 *PCW Revision August 3, 2011*  
**Reg. Ent. Reference No.** RN105359392 and RN106967490  
**Media [Statute]** Waste Tires  
**Enf. Coordinator** Margarita Dennis

**Violation Number**

**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, the Respondent transported used or scrap tires from Tony's Tire Service at 17115 Martinez Losoya Road, San Antonio, Bexar County, Texas to Tony's Tire Shop at 13495 Somerset Road, Von Ormy, Bexar County, Texas.

**Base Penalty**

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

**OR**

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

**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="text" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

One quarterly event is recommended from the documentation of the violation during the September 12, 2013 investigation to the November 27, 2013 screening date.

**Good Faith Efforts to Comply**

**0.0%** 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 Respondent does 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** Juan Antonio Diaz dba Tony's Tire Service and dba Tony's Tire Shop  
**Case ID No.** 47984  
**Reg. Ent. Reference No.** RN105359392 and RN106967490  
**Media** Waste Tires  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$863	12-Sep-2013	22-Aug-2014	0.94	\$41	n/a	\$41
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove approximately 800 tires and dispose of them at an authorized facility. Date required is the investigation date. 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 \$863

**TOTAL** \$41

Screening Date 27-Nov-2013

Docket No. 2013-2144-MSW-E

PCW

Respondent Juan Antonio Diaz dba Tony's Tire Service and dba Tony's Tire Shop

Policy Revision 3 (September 2011)

Case ID No. 47984

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105359392 and RN106967490

Media [Statute] Waste Tires

Enf. Coordinator Margarita Dennis

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §§ 328.56, 328.59 and 328.60(a)

Violation Description

Failed to obtain a scrap tire storage registration for the Facility prior to storing more than 500 used or scrap tires or weight equivalent tire pieces or any combination thereof on the ground, or 2,000 used or scrap tires in trailers, or in enclosed or lockable containers. Specifically, approximately 800 scrap tires or weight equivalent tire pieces or any combination thereof were stored on the ground at Tony's Tire Shop.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

76 Number of violation days

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

Violation Base Penalty \$3,750

One quarterly event is recommended from the documentation of the violation during the September 12, 2013 investigation to the November 27, 2013 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$471

Violation Final Penalty Total \$4,125

This violation Final Assessed Penalty (adjusted for limits) \$4,125

## Economic Benefit Worksheet

**Respondent** Juan Antonio Diaz dba Tony's Tire Service and dba Tony's Tire Shop  
**Case ID No.** 47984  
**Reg. Ent. Reference No.** RN105359392 and RN106967490  
**Media** Waste Tires  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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	12-Sep-2013	22-Aug-2014	0.94	\$471	n/a	\$471
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to register the Facility as a scrap tire storage Facility. Date required is the investigation date. 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**

\$471

Screening Date 27-Nov-2013

Docket No. 2013-2144-MSW-E

PCW

Respondent Juan Antonio Diaz dba Tony's Tire Service and dba Tony's Tire Shop

Policy Revision 3 (September 2011)

Case ID No. 47984

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105359392 and RN106967490

Media [Statute] Waste Tires

Enf. Coordinator Margarita Dennis

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 328.58

Violation Description

Failed to document all used or scrap tires or tire pieces generated, transported, and/or removed by completing a manifest form.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

76 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,750

One single event is recommended based on the documentation of the violation during the September 12, 2013 investigation.

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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$47

Violation Final Penalty Total \$4,125

This violation Final Assessed Penalty (adjusted for limits) \$4,125

## Economic Benefit Worksheet

**Respondent** Juan Antonio Diaz dba Tony's Tire Service and dba Tony's Tire Shop  
**Case ID No.** 47984  
**Reg. Ent. Reference No.** RN105359392 and RN106967490  
**Media** Waste Tires  
**Violation No.** 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	\$1,000	12-Sep-2013	22-Aug-2014	0.94	\$47	n/a	\$47
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 develop and implement procedures to ensure that manifests are properly completed and maintained. Date required is the investigation date. 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**

\$47

Screening Date 27-Nov-2013

Docket No. 2013-2144-MSW-E

PCW

Respondent Juan Antonio Diaz dba Tony's Tire Service and dba Tony's Tire Shop

Policy Revision 3 (September 2011)

Case ID No. 47984

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105359392 and RN106967490

Media [Statute] Waste Tires

Enf. Coordinator Margarita Dennis

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 328.54(d)

Violation Description

Failed to identify any vehicle or trailer used to transport used or scrap tires or tire pieces on both sides and the rear of the vehicle. Specifically, trailers at Tony's Tire Service used to transport tires did not have the required signage posted with the TCEQ Transporter Registration number.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
		x	

Percent 7.0%

Matrix Notes

50% of the rule requirement was not met.

Adjustment \$23,250

\$1,750

Violation Events

Number of Violation Events 1

76 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,750

One single event is recommended from the documentation of the violation during the September 12, 2013 investigation to the November 27, 2013 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$1,925

This violation Final Assessed Penalty (adjusted for limits) \$1,925

## Economic Benefit Worksheet

**Respondent** Juan Antonio Diaz dba Tony's Tire Service and dba Tony's Tire Shop  
**Case ID No.** 47984  
**Reg. Ent. Reference No.** RN105359392 and RN106967490  
**Media** Waste Tires  
**Violation No.** 4

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)	\$100	12-Sep-2013	22-Aug-2014	0.94	\$5	n/a	\$5

#### Notes for DELAYED costs

Estimated cost to properly identify any vehicle or trailer used to transport used or scrap tires or tire pieces with the name and place of business of the transporter and the Commission registration number (\$100). Date required is the investigation date. 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 \$100

**TOTAL** \$5

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 CN603263807, RN105359392, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

**Customer, Respondent, or Owner/Operator:** CN603263807, Diaz, Juan Antonio      **Classification:** UNSATISFACTORY      **Rating:** 105.00

**Regulated Entity:** RN105359392, Tony's Tire Service      **Classification:** UNCLASSIFIED      **Rating:** -----

**Complexity Points:** 1      **Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 17115 MARTINEZ LOSOYA RD SAN ANTONIO, TX 78221-5111, BEXAR COUNTY

**TCEQ Region:** REGION 13 - SAN ANTONIO

**ID Number(s):** TIRES REGISTRATION 6200440

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

**Date Compliance History Report Prepared:** May 05, 2015

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** September 01, 2008 to August 31, 2013

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

**Name:** Margarita Dennis

**Phone:** (817) 588-5892

## **Site and Owner/Operator History:**

- 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 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 CN603263807, RN106967490, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

**Customer, Respondent, or Owner/Operator:** CN603263807, Diaz, Juan Antonio      **Classification:** UNSATISFACTORY      **Rating:** 105.00

**Regulated Entity:** RN106967490, Tony's Tire Shop      **Classification:** NOT APPLICABLE      **Rating:** N/A

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

**CH Group:** 14 - Other

**Location:** 13495 SOMERSET ROAD VON ORMY, TX 78073, BEXAR COUNTY

**TCEQ Region:** REGION 13 - SAN ANTONIO

**ID Number(s):** MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R13106967490

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

**Date Compliance History Report Prepared:** November 27, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** November 27, 2008 to November 27, 2013

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

**Name:** Margarita Dennis

**Phone:** (817) 588-5892

## 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  
JUAN ANTONIO DIAZ DBA  
TONY'S TIRE SERVICE AND  
DBA TONY'S TIRE SHOP;  
RN105359392 AND RN106967490**

**§  
§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**AGREED ORDER**

**DOCKET NO. 2013-2144-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 Juan Antonio Diaz d/b/a Tony's Tire Service and d/b/a Tony's Tire Shop ("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 represented by, Roger A. Perez of The Law Offices of Roger A. Perez, together stipulate that:

1. Respondent operates a tire transporting business located at 17115 Martinez Losoya Road in San Antonio, Bexar County, Texas (Transporter Registration No. 6200440) (RN105359392) (the "Transporter Facility") and a tire processing facility located at 13495 Somerset Road in Von Ormy, Bexar County, Texas (RN106967490) (the "Tire Facility") (collectively, the "Facilities"). The Facilities involve the management and/or the disposal of municipal solid waste 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 §§ 7.002, 7.051, 7.070, and 7.073, 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 fourteen thousand three hundred dollars (\$14,300.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid four hundred five dollars (\$405.00) of the penalty. The remaining amount of thirteen thousand eight hundred ninety-five dollars (\$13,895.00) shall be paid in thirty-five (35) monthly payments of three hundred ninety-seven dollars (\$397.00) 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. In addition, 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. 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). 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 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.
7. This Order represents the complete and fully-integrated agreement of the parties. 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.
8. This Order shall terminate five years from its effective date or upon full compliance with all the terms and conditions set forth in this Order, whichever is later.

## **II. ALLEGATIONS**

1. During an investigation conducted on September 12, 2013, 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, Respondent transported used or scrap tires from the Transporter Facility to the Tire Facility, which is not authorized to accept and/or store used or scrap tires and/or tire pieces;
  - b. Failed to obtain a scrap tire storage registration for the Tire Facility prior to storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground) or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers or in enclosed or lockable containers, in violation of 30 TEX. ADMIN. CODE §§ 328.56, 328.59, and 328.60(a). Specifically, approximately 800 scrap tires or weight equivalent tire pieces or any combination thereof were stored on the ground at the Tire Facility;
  - c. Failed to document all used or scrap tires or tire pieces generated at, transported to, and/or removed from the Facilities by completing a manifest form, in violation of 30 TEX. ADMIN. CODE § 328.58; and
  - d. Failed to identify any vehicle or trailer used to transport used or scrap tires or tire pieces on both sides and the rear of the vehicle, in violation of 30 TEX. ADMIN. CODE § 328.54(d). Specifically, the trailers at the Transporter Facility used to transport tires did not have the required signage with the TCEQ Transporter Registration number.

## **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: Juan Antonio Diaz, Docket No. 2013-2144-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 accepting used and/or scrap tires at the Tire Facility until proper authorization is obtained in accordance with 30 Tex. Admin. Code ch. 328.
  - b. Within 30 days after the effective date of this Order:
    - i. Either:
      - A. Remove all used and/or scrap tires and /or tire pieces from the Tire Facility and dispose of them at an authorized facility; or
      - B. Obtain a scrap tire storage and processing site registration for the Tire Facility, in accordance with 30 TEX. ADMIN. CODE §§ 328.56, 328.59, and 328.60;
    - ii. Develop and implement procedures to ensure that used or scrap tires and/or tire pieces are transported to authorized facilities, in accordance with 30 TEX. ADMIN. CODE § 328.57;
    - iii. Develop and implement procedures to ensure manifests are completed and maintained for all used or scrap tires and/or tire pieces that are generated at, transported to, and/or removed from the Facilities, in accordance with 30 TEX. ADMIN. CODE § 328.58; and
    - iv. Properly identify all vehicles and/or trailers used to transport used or scrap tires or tire pieces, in accordance with 30 TEX. ADMIN. CODE § 328.54.
  - c. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provisions Nos. 2.a. through 2.b.iv. 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  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road, San Antonio, Texas 78233-4480

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 Facilities' operations referenced in this Order.
5. 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.
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. 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

July 20, 2015  
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 - Juan Antonio Diaz  
13495 Somerset Road  
Von Ormy, Texas 78073

05/06/2015  
Date

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

\_\_\_\_\_

2015-07-20 10:00 AM  
2015-07-20 10:00 AM  
2015-07-20 10:00 AM