

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 50783
Eli Rodriguez d/b/a Rodriguez Tire Shop
RN107890097
Docket No. 2015-1022-MSW-E

Order Type:

Default Order

Media:

MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

119 South Avenue K, Hereford, Deaf Smith County

Type of Operation:

used tire shop

Other Significant Matters:

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

Texas Register Publication Date: January 29, 2016

Comments Received: None

Penalty Information

Total Penalty Assessed: \$1,312

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$1,312

Compliance History Classifications:

Person/CN –N/A
Site/RN – unclassified

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Eli Rodriguez d/b/a Rodriguez Tire Shop

RN107890097

Docket No. 2015-1022-MSW-E

Investigation Information

Complaint Date(s): October 10, 2014
Complaint Information: Alleged that Respondent was transporting scrap tires without a registration and/or manifesting.

Date(s) of Investigation: November 7, 2014; June 15, 2015

Date(s) of NOV(s): December 19, 2014

Date(s) of NOE(s): June 17, 2015

Violation Information

Failed to retain and make available upon request by agency personnel original manifests, work orders, invoices or other documentation used to support activities related to the accumulation, handling, and shipment of used or scrap tires or scrap tire pieces [30 TEX. ADMIN. CODE § 328.58(f)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
None

Technical Requirements:
N/A – Respondent no longer operates the facility.

Litigation Information

Date Petition(s) Filed: November 12, 2015

Date Green Card(s) Signed: November 16, 2015

Date Answer(s) Filed: N/A

Contact Information

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

TCEQ Enforcement Coordinator: Margarita Dennis, Enforcement Division, (817) 588-5892

TCEQ Regional Contact: Eddy Vance, Amarillo Regional Office, (806) 353-9251

Respondent Contact: Eli Rodriguez, 900 S. Lee, Hereford, Texas 79045

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	22-Jun-2015	Screening	7-Jul-2015	EPA Due	
	PCW	25-Sep-2015				

RESPONDENT/FACILITY INFORMATION	
Respondent	Eli Rodriguez dba Rodriguez Tire Shop
Reg. Ent. Ref. No.	RN107890097
Facility/Site Region	1-Amarillo
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	1
Enf./Case ID No.	50783	Order Type	1660
Docket No.	2015-1022-MSW-E	Government/Non-Profit	No
Media Program(s)	Waste Tires	Enf. Coordinator	Margarita Dennis
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$62
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Notes: Enhancement for one NOV with same/similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$7
 Estimated Cost of Compliance: \$100
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,312
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$1,312
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,312
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$1,312
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Screening Date 7-Jul-2015

Docket No. 2015-1022-MSW-E

PCW

Respondent Eli Rodriguez dba Rodriguez Tire Shop

Policy Revision 4 (April 2014)

Case ID No. 50783

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107890097

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>)	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) 5%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 5%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 5%

Screening Date	7-Jul-2015	Docket No.	2015-1022-MSW-E	PCW
Respondent	Eli Rodriguez dba Rodriguez Tire Shop			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	50783			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN107890097			
Media [Statute]	Waste Tires			
Enf. Coordinator	Margarita Dennis			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 328.58(f)			
Violation Description	Failed to retain and make available upon request by agency personnel original manifests, work orders, invoices or other documentation used to support activities related to the accumulation, handling, and shipment of used or scrap tires or scrap tire pieces.			
		Base Penalty	\$25,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent 0.0%
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent 5.0%
Matrix Notes	100% of the rule requirement was not met.				
			Adjustment	\$23,750	
				\$1,250	

Violation Events

Number of Violation Events	1	22	Number of violation days
<i>mark only one with an x</i>	daily		Violation Base Penalty \$1,250
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event	x	
	One single event is recommended.		

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDRP/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	\$1,250

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$7	Violation Final Penalty Total \$1,313
This violation Final Assessed Penalty (adjusted for limits) \$1,313	

Economic Benefit Worksheet

Respondent Eli Rodriguez dba Rodriguez Tire Shop
Case ID No. 50783
Reg. Ent. Reference No. RN107890097
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	\$100	7-Nov-2014	18-Mar-2016	1.36	\$7	n/a	\$7
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 retain all manifests showing the collection and disposition of all used or scrap tires or scrap tire pieces and maintain records. Date required is the original 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 \$7

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 CN604717439, RN107890097, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN604717439, Rodriguez, Eli

Classification: NOT APPLICABLE

Rating: N/A

Regulated Entity: RN107890097, Rodriguez Tire Shop

Classification: UNCLASSIFIED

Rating: -----

Complexity Points: 0

Repeat Violator: NO

CH Group: 14 - Other

Location: 119 S AVENUE K HEREFORD, TX 79045-5701, DEAF SMITH COUNTY

TCEQ Region: REGION 01 - AMARILLO

ID Number(s):

Compliance History Period: September 01, 2009 to August 31, 2014

Rating Year: 2014

Rating Date: 09/01/2014

Date Compliance History Report Prepared: July 14, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: July 07, 2010 to July 07, 2015

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.

1 Date: 12/19/2014 (1215607)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.58

Description: Failure to provide documentation associated with the disposal of scrap and used tires.

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



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ELI RODRIGUEZ DBA
RODRIGUEZ TIRE SHOP;
RN107890097**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2015-1022-MSW-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Eli Rodriguez d/b/a Rodriguez Tire Shop ("Respondent").

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

FINDINGS OF FACT

1. Respondent operated a used tire shop located at 119 South Avenue K in Hereford, Deaf Smith 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 November 7, 2014, and a record review conducted on June 15, 2015, an investigator documented that Respondent failed to retain and make available upon request by agency personnel original manifests, work orders, invoices or other documentation used to support activities related to the accumulation, handling, and shipment of used or scrap tires or scrap tire pieces.
3. The Executive Director recognizes that Respondent no longer operates the Facility.
4. 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 Eli Rodriguez d/b/a Rodriguez Tire Shop" (the "EDPRP") in the TCEQ Chief Clerk's office on November 12, 2015.
5. By letter dated November 12, 2015, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on November 16, 2015, as evidenced by the signature on the card.
6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

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 retain and make available upon request by agency personnel original manifests, work orders, invoices

or other documentation used to support activities related to the accumulation, handling, and shipment of used or scrap tires or scrap tire pieces, in violation of 30 TEX. ADMIN. CODE § 328.58(f).

3. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
4. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
5. 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.
6. An administrative penalty in the amount of one thousand three hundred twelve dollars (\$1,312.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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 one thousand three hundred twelve dollars (\$1,312.00) 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: Eli Rodriguez d/b/a Rodriguez Tire Shop; Docket No. 2015-1022-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. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent.
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.

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 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.
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 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

Date

AFFIDAVIT OF AUDREY LITER

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Audrey Liter. 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 Eli Rodriguez d/b/a Rodriguez Tire Shop" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 12, 2015.

The EDPRP was mailed to Respondent's last known address November 12, 2015, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on November 16, 2015, as evidenced by the signature on the card.

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

Audrey Liter

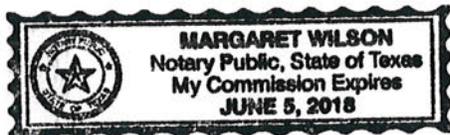
Audrey Liter, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Audrey Liter, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Subscribed and sworn to before me on this 7th day of JANUARY, A.D. 2016.

Margaret Wilson

Notary Public, State of Texas



Notary without Bond