

Executive Summary – Enforcement Matter – Case No. 50069
John M. Brown dba Brown Scrap Tires
RN104345350
Docket No. 2015-0264-MSW-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Brown Scrap Tires, 21710 State Highway 64, Canton, Van Zandt County

Type of Operation:

Scrap tire generator and transporter facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: November 13, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$16,875

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$13,275

Total Paid to General Revenue: \$100

Total Due to General Revenue: \$3,500

Payment Plan: 35 payments of \$100 each

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

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John M. Brown dba Brown Scrap Tires
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Docket No. 2015-0264-MSW-E

Investigation Information

Complaint Date(s): November 14, 2014

Complaint Information: Alleged the Respondent was storing in excess of 500 scrap tires on the ground on-site.

Date(s) of Investigation: November 19, 2014

Date(s) of NOE(s): January 20, 2015

Violation Information

1. Failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers. Specifically, 3,000 scrap tires were stored on the ground at the Facility [30 TEX. ADMIN. CODE §§ 328.56, 328.59(a) and 328.60(a)].
2. 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)].
3. Failed to submit to the Executive Director an annual activity report each calendar year showing the number and type of used or scrap tires collected listed by generator name and address, the disposition of the tires, and the number of whole used or scrap tires delivered to each facility. Specifically, the Respondent did not submit an activity report for calendar year 2013 [30 TEX. ADMIN. CODE § 328.57(e)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Immediately:
 - i. Cease storing any additional scrap tires at the Facility until the proper registration has been obtained; and
 - ii. Begin submitting a complete and accurate Scrap Tire Transporter Annual Report including but not limited to the calendar year 2013 report.
- b. Within 30 days:
 - i. Develop and implement standard operating procedures to ensure all used or scrap tires or tire pieces are transported to an authorized facility;

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- ii. Obtain a scrap tire management registration for storage and processing of scrap tires or remove all unauthorized scrap tires to an authorized scrap tire storage, processing or disposal facility; and
 - iii. Develop and implement standard operating procedures to ensure that annual activity reports are completed and submitted.
- c. Within 45 days, submit written certification to demonstrate compliance with a. through b.iii.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Margarita Dennis, Enforcement Division, Enforcement Team 7, MC R-04, (817) 588-5892; Melissa Cordell, Enforcement Division, MC 219, (512) 239-2483
TCEQ SEP Coordinator: N/A
Respondent: John Brown, Owner, Brown Scrap Tires, 21710 State Highway 64, Canton, Texas 75103
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	26-Jan-2015	Screening	6-Feb-2015	EPA Due	
	PCW	16-Sep-2015				

RESPONDENT/FACILITY INFORMATION	
Respondent	John M. Brown dba Brown Scrap Tires
Reg. Ent. Ref. No.	RN104345350
Facility/Site Region	5-Tyler
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	50069	No. of Violations	3
Docket No.	2015-0264-MSW-E	Order Type	1660
Media Program(s)	Waste Tires	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Margarita Dennis
		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	\$18,750
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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	-10.0% Reduction	Subtotals 2, 3, & 7	-\$1,875
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Notes: Reduction for High Performer classification.

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	\$1,181
Estimated Cost of Compliance	\$25,250

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$16,875
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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	\$16,875
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$16,875
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DEFERRAL	20.0% Reduction	Adjustment	-\$3,375
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$13,500
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Screening Date 6-Feb-2015

Docket No. 2015-0264-MSW-E

PCW

Respondent John M. Brown dba Brown Scrap Tires

Policy Revision 4 (April 2014)

Case ID No. 50069

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104345350

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 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%

Please Enter Yes or No

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)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High 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 6-Feb-2015

Docket No. 2015-0264-MSW-E

PCW

Respondent John M. Brown dba Brown Scrap Tires

Policy Revision 4 (April 2014)

Case ID No. 50069

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104345350

Media [Statute] Waste Tires

Enf. Coordinator Margarita Dennis

Violation Number 1

Rule Cite(s)

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

Violation Description

Failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers. Specifically, 3,000 scrap tires were stored on the ground at the Facility.

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 3

79 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$11,250

Three monthly events are recommended from the documentation of the violation during the November 19, 2014 investigation to the February 6, 2015 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/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 \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$463

Violation Final Penalty Total \$10,125

This violation Final Assessed Penalty (adjusted for limits) \$10,125

Economic Benefit Worksheet

Respondent John M. Brown dba Brown Scrap Tires
Case ID No. 50069
Reg. Ent. Reference No. RN104345350
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	Overtime Costs	EB Amount
No commas or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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	19-Nov-2014	23-Oct-2015	0.93	\$463	n/a	\$463
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a scrap tire storage site registration. 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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$463

Screening Date 6-Feb-2015

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PCW

Respondent John M. Brown dba Brown Scrap Tires

Policy Revision 4 (April 2014)

Case ID No. 50069

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104345350

Media [Statute] Waste Tires

Enf. Coordinator Margarita Dennis

Violation Number 2

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.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (15.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0.0%).

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 Number of violation days 79

Table with frequency options: daily, weekly, monthly, quarterly, semiannual, annual, single event. Quarterly is marked with an X.

Violation Base Penalty \$3,750

One quarterly event is recommended from the documentation of the violation during the November 19, 2014 investigation to the February 6, 2015 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A. N/A is marked with an 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 \$695

Violation Final Penalty Total \$3,375

This violation Final Assessed Penalty (adjusted for limits) \$3,375

Economic Benefit Worksheet

Respondent John M. Brown dba Brown Scrap Tires
Case ID No. 50069
Reg. Ent. Reference No. RN104345350
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$15,000	19-Nov-2014	23-Oct-2015	0.93	\$695	n/a	\$695
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to transport approximately 3,000 used or scrap tires (\$5.00 per tire) to 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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$15,000

TOTAL

\$695

Screening Date 6-Feb-2015

Docket No. 2015-0264-MSW-E

PCW

Respondent John M. Brown dba Brown Scrap Tires

Policy Revision 4 (April 2014)

Case ID No. 50069

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104345350

Media [Statute] Waste Tires

Enf. Coordinator Margarita Dennis

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 328.57(e)

Violation Description

Failed to submit to the Executive Director an annual activity report each calendar year showing the number and type of used or scrap tires collected listed by generator name and address, the disposition of the tires, and the number of whole used or scrap tires delivered to each facility. Specifically, the Respondent did not submit a report for calendar year 2013.

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 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

342 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.

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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$24

Violation Final Penalty Total \$3,375

This violation Final Assessed Penalty (adjusted for limits) \$3,375

Economic Benefit Worksheet

Respondent John M. Brown dba Brown Scrap Tires
Case ID No. 50069
Reg. Ent. Reference No. RN104345350
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$100	1-Mar-2014	23-Oct-2015	1.65	\$1	\$11	\$12
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)	\$150	1-Mar-2014	23-Oct-2015	1.65	\$12	n/a	\$12

Notes for DELAYED costs

Estimated delayed cost to develop and implement procedures to ensure that annual activity reports are completed and submitted. Date required is the date the report was due. Final date is the estimated date of compliance. Estimated delayed cost to submit an annual report for calendar year 2013. Date required is the date the report was due. 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 \$250

TOTAL \$24

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 CN601604705, RN104345350, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN601604705, John M. Brown **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN104345350, JOHN M BROWN **Classification:** HIGH **Rating:** 0.00

Complexity Points: 2 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 21710 STATE HIGHWAY 64 CANTON, TX 75103-6147, VAN ZANDT COUNTY

TCEQ Region: REGION 05 - TYLER

ID Number(s):
TIRES REGISTRATION 5839 **TIRES REGISTRATION** 25847

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: February 06, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 06, 2010 to February 06, 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? 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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JOHN M. BROWN DBA BROWN
SCRAP TIRES
RN104345350**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2015-0264-MSW-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding John M. Brown dba Brown Scrap Tires ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a scrap tire generator and transporter facility at 21710 State Highway 64 in Canton, Van Zandt County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 25, 2015.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Sixteen Thousand Eight Hundred Seventy-Five Dollars (\$16,875) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Revenue Operations Section of the

Commission's Financial Administration Division reviewed the financial documentation submitted by the Respondent and determined that the Respondent is unable to pay part of the administrative penalty. Therefore, Thirteen Thousand Two Hundred Seventy-Five Dollars (\$13,275) of the penalty is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The Respondent has paid One Hundred Dollars (\$100) of the undeferred administrative penalty. The remaining amount of Three Thousand Five Hundred Dollars (\$3,500) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's opinion, 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, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. 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.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. 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 the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers, in violation of 30 TEX. ADMIN. CODE §§ 328.56, 328.59(a) and

328.60(a), as documented during an investigation conducted on November 19, 2014. Specifically, 3,000 scrap tires were stored on the ground at the Facility.

2. 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), as documented during an investigation conducted on November 19, 2014.
3. Failed to submit to the Executive Director an annual activity report each calendar year showing the number and type of used or scrap tires collected listed by generator name and address, the disposition of the tires, and the number of whole used or scrap tires delivered to each facility, in violation of 30 TEX. ADMIN. CODE § 328.57(e), as documented during an investigation conducted on November 19, 2014. Specifically, the Respondent did not submit an activity report for calendar year 2013.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: John M. Brown dba Brown Scrap Tires, Docket No. 2015-0264-MSW-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order:
 - i. Cease storing any additional scrap tires at the Facility until the proper registration has been obtained; and
 - ii. Begin submitting a complete and accurate Scrap Tire Transporter Annual Report (TCEQ -10311), including but not limited to the calendar year 2013 report, in accordance with 30 TEX. ADMIN. CODE § 328.57 to:

Scrap Tire Management Program, MC 124
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Agreed Order:
- i. Develop and implement standard operating procedures to ensure all used or scrap tires or tire pieces are transported to an authorized facility;
 - ii. Obtain a scrap tire management registration for storage and processing of scrap tires, in accordance with 30 TEX. ADMIN. CODE §§ 328.56, 328.59, and 328.60, or remove all unauthorized scrap tires to an authorized scrap tire storage, processing or disposal facility; and
 - iii. Develop and implement standard operating procedures to ensure that annual activity reports are completed and submitted in accordance with 30 TEX. ADMIN. CODE § 328.57.
- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a through 2.b.iii. The certification shall be notarized by a State of Texas Notary Public and 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed 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 Agreed 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.

8. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

2/18/16

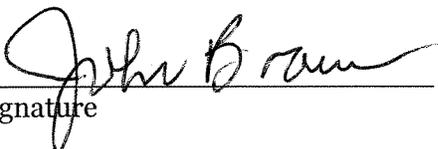
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, 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, if any, 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 submitted;
- 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, any falsification of any compliance documents may result in criminal prosecution.



Signature

9-28-15

Date

John Brown

Name (Printed or typed)
Authorized Representative of
John M. Brown dba Brown Scrap Tires

Brown Scrap tires

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.