

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 17, 2008

The Honorable Howard S. Seitzman
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

Re: Gregg Dentler & Hugh Doug Dentler dba Dentlers Tire Shop
TCEQ Docket No. 2005-1052-MSW-E
SOAH Docket No. 582-08-0859

Judge Seitzman,

Enclosed please find the Executive Director's proposed modifications regarding the Proposal for Decision and proposed default Order issued by you in this case on March 12, 2008.

Sincerely,

A handwritten signature in black ink, appearing to read "Lena Roberts".

Lena Roberts, Attorney
Litigation Division

cc: Respondents
Tom Greimel, Enforcement Division, TCEQ, MC 128
Blas Coy, Public Interest Counsel, TCEQ, MC 103

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 MAR 17 PM 1:53
CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-08-0859
TCEQ DOCKET NO. 2005-1052-MSW-E

IN THE MATTER OF §
AN ENFORCEMENT ACTION §
AGAINST GREGG DENTLER & §
HUGH DOUG DENTLER DBA §
DENTLERS TIRE SHOP §
RN104596226 §

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S PROPOSED MODIFICATIONS TO THE
ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

NOW COMES the Executive Director, by and through his attorney, Lena Roberts, and submits the following proposal to modify the Administrative Law Judge's Proposed Order. While the Executive Director agrees with the substance of the Proposed Order, these suggested modifications are intended to clarify the provisions of the Order and to correct typographical errors. These suggested modifications are proposed pursuant to 30 TEX. ADMIN. CODE § 80.257.

The Executive Director recommends the following modifications:

1. That every reference to "Hugh Dentler" be replaced with "Hugh Doug Dentler" in order to maintain consistency with previous filings in this case and TCEQ records. Specifically, the name "Doug" should be inserted after the name "Hugh" in the style of the case, in the introductory paragraph, and in Ordering Provision No. 1 (two instances).
2. That in Finding of Fact No. 1, the word "facility" be replaced with "transport and disposal service".
3. That in Finding of Fact No. 1, the comma between "TEX. HEALTH & SAFETY CODE" and "ch. 361" be removed.
4. That in Finding of Fact No. 3, the date "April 14, 2007" be changed to "September 14, 2007".
5. That in Findings of Fact No. 4, the word "Permit" be deleted from the end of the paragraph.
6. That in Finding of Fact No. 5, the words "the previous finding" be replaced with "Finding of Fact No. 4".
7. That in Finding of Fact No. 7, the words "the previous finding" be replaced with "Finding of Fact No. 6".

8. That in Conclusion of Law No. 7, the cite to 30 TEX. ADMIN. CODE § 70.160(b) be corrected to 30 TEX. ADMIN. CODE § 70.106(b).
9. That in Conclusion of Law No. 7, a citation to 30 TEX. ADMIN. CODE § 80.113(d) be added after 30 TEX. ADMIN. CODE § 70.106(b).
10. That the heading "III. ORDERING PROVISIONS" be inserted after Conclusion of Law No. 12.
11. That in Ordering Provision No. 1, prior to the sentence that begins "Checks rendered to pay penalties imposed by this order . . ." the following sentences be inserted:

"The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here."
12. That in Ordering Provision No. 9, the word "Respondent" be replaced with "each of the parties."
13. That headers be inserted beginning on page 2 which read:

In re: Gregg Dentler & Hugh Doug Dentler dba Dentlers Tire Shop
TCEQ Docket No. 2005-1052-MSW-E
SOAH Docket No. 582-08-0859
Page [#]

PRAYER

To the extent that the Administrative Law Judge's Proposal for Decision is inconsistent with these recommended modifications, the Executive Director excepts to the Proposal for Decision. Copies of the Proposed Order with the recommended modifications are attached. Attachment "A" is a redline/strikeout version which clearly delineates the recommended modifications. Attachment "B" is a copy of the Proposed Order incorporating the Executive Director's recommended changes.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Mary R. Risner, Director
Litigation Division

by



Lena Roberts
State Bar of Texas No. 24041793
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
(512) 239-3434 (FAX)

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 2008, the original and 11 copies of the foregoing "Executive Director's Proposed Modifications to the Administrative Law Judge's Proposed Order" ("Proposed Modifications") were filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing Proposed Modifications were sent to the following:

Via Inter-Agency Mail

Via Facsimile to (512) 475-4994

The Honorable Howard S. Seitzman
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

Via First Class Mail, Postage Prepaid

Via Certified Mail, Return Receipt Requested

Mr. Hugh Doug Dentler, #61025-180
USP Pollock, U.S. Penitentiary
P.O. Box 2099
Pollock, Louisiana 71467
Article Number 7004 2510 0003 9117 7795

Mr. Gregg Dentler
c/o Wilke Tire Service
1202 South Port Avenue
Corpus Christi, Texas 78405-2308
Article Number 7004 2510 0003 9117 7801

Via Intra Agency Mail

Blas Coy, TCEQ Public Interest Counsel, MC 103
Les Trobman, TCEQ Office of the General Counsel, MC 101



Lena Roberts, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



DEFAULT ORDER Assessing Administrative Penalties Against
and Ordering Corrective Action by Gregg
Dentler & Hugh Doug Dentler d/b/a Dentlers
Tire Shop; TCEQ Docket No. 2005-1052-
MSW-E; SOAH Docket No. 582-08-0859

On _____, 2008, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Gregg Dentler & Hugh Doug Dentler d/b/a Dentlers Tire Shop (collectively Respondent). A Proposal for Decision (PFD) was presented by Howard S. Seitzman, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a public hearing concerning the EDPRP on January 17, 2008, in Austin, Texas.

The Executive Director, represented by Barham Richard, appeared at the hearing. Respondent was not present at the hearing nor represented by counsel and did not file for a continuance. The Executive Director requested that a default be entered against the Respondent. The ALJ agreed with the Executive Director's request.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Respondent owns and operates a used and scrap tire ~~facility~~ transport and disposal service located at 2802 South Port Avenue, Corpus Christi, Nueces County, Texas (the Facility). The Facility involves the management and/or disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE, ch. 361.
2. During a multi-agency investigation conducted from May 3 through May 20, 2005, by the TCEQ Corpus Christi Regional Office, the Corpus Christi Fire Department Fire Prevention Bureau, the San Patricio County Sheriff's Department, the State Fire Marshall, and the San Patricio County Constable's Environmental Enforcement Division, violations were documented.
3. On ~~April~~ September 14, 2007, the Executive Director filed the EDPRP, in accordance with TEX. WATER CODE ANN. § 7.054, alleging that Respondent had violated 30 TEX. ADMIN. CODE §§ 328.57(c)(1) and 330.15©, and TEX. HEALTH & SAFETY CODE § 361.112(a) and ©.
4. In the EDPRP, the Executive Director alleged that Respondent violated 30 TEX. ADMIN. CODE § 328.57(c)(1), by failing to register with the TCEQ a used or scrap tire transporter operation prior to conducting business ~~Permit~~.

5. For the violation alleged in ~~the previous finding~~ Finding of Fact No. 4, the Executive Director seeks a penalty of \$2,500 on the basis that this was a single event, the violation was a major programmatic violation, and Respondent received an estimated economic benefit of \$4.00 from the violation.
6. In the EDPRP, the Executive Director alleged that Respondent violated 30 TEX. ADMIN. CODE § 330.15© and TEX. HEALTH & SAFETY CODE § 361.112(a) and ©, by causing, suffering, allowing, and permitting the dumping of municipal solid waste without prior written authorization of the Commission. Specifically, Respondent stored and disposed of more than 500 scrap tires at facilities not permitted by the Commission for that purpose, at various locations throughout Nueces County and San Patricio County, Texas, including but not limited to: 8702 Agnes Street, 2802 South Port Avenue, 5321 Agnes Street, 5425 South Staples, and 3802 Morgan, in Corpus Christi, Nueces County; and 20742 Magnolia Street and 113 Virginia, in San Patricio, San Patricio County, Texas.
7. For the violation alleged in ~~the previous finding~~ Finding of Fact No. 6, the Executive Director seeks a penalty of \$15,000 on the basis that there were six single event violations of this nature, the violation was a minor actual violation, and Respondent received an estimated economic benefit of \$103.00 from the violation.
8. The Executive Director mailed a copy of the EDPRP to Hugh Doug Dentler #61025-180, at USP Pollock, U.S. Penitentiary, P.O. Box 2099, Pollock Louisiana, 71467, on the same date that the EDPRP was filed.

9. The Executive Director mailed a copy of the EDPRP to Gregg Dentler c/o Wilke Tire Service, 1202 South Port Avenue, Corpus Christi, Texas, 78405-2308, on the same date that the EDPRP was filed.
10. On September 19, 2007, Hugh Doug Dentler, on behalf of himself and Dentler's Tire Shop, filed a response to the EDPRP. Gregg Dentler did not file a response to the EDPRP.
11. On November 13, 2007, the Executive Director requested the matter be referred to SOAH for hearing.
12. On December 4, 2007, the TCEQ Chief Clerk mailed notice of the scheduled preliminary hearing to Respondent.
13. The notice of hearing:
 - (a) Indicated the time, date, place, and nature of the hearing;
 - (b) Stated the legal authority and jurisdiction for the hearing;
 - (c) Indicated the statutes and rules the Executive Director alleged Respondent violated;
 - (d) Referred to the EDPRP, a copy of which was attached, which indicated the matters asserted by the Executive Director;
 - (e) Advised Respondent, in at least 12-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by legal representative would result in the factual allegations contained in the notice and EDPRP being deemed as true and the relief sought in the notice possibly being granted by default; and
 - (f) Included a copy of the Executive Director's penalty calculation worksheet, which shows how the penalty was calculated for the alleged violations.

14. On January 17, 2008, the ALJ convened the preliminary hearing. Respondent did not appear, nor did a representative of Respondent appear.
15. Based on Respondent's failure to appear at the hearing, the Executive Director moved for a default against Respondent in which all of the Executive Director's allegations would be deemed admitted as true, the penalties the Executive Director seeks would be assessed against Respondent, and Respondent would be ordered to take the corrective action recommended by the Executive Director. The ALJ granted the motion.

II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE ANN. § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Water Code or of the Texas Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under TEX. WATER CODE ANN. § 7.052, a penalty may not exceed \$10,000 per violation, per day for the violations alleged in this proceeding.
3. Additionally, the Commission may order the violator to take corrective action. TEX. WATER CODE ANN. § 7.073.
4. As required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations or the penalties or corrective actions proposed therein.

5. As required by TEX. GOV'T CODE ANN. § 2001.052; TEX. WATER CODE ANN. § 7.058; 1 TEX. ADMIN. CODE § 155.27; and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalties. Additionally, Respondent was notified, in accordance with 1 TEX. ADMIN. CODE § 155.55, that if Respondent failed to appear at the hearing, a default could be rendered against Respondent in which all the allegations contained in the notice of hearing would be deemed admitted as true.
6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
7. Based on the above Findings of Fact and Conclusions of Law:
 - (a) A default should be entered against Respondent in accordance with 1 TEX. ADMIN. CODE § 155.55 and 30 TEX. ADMIN. CODE §§ 70.106(b) and 80.113(d); and
 - (b) The allegations contained in the notice of the hearing, including those in the EDPRP attached thereto, are admitted as true.
8. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 30 TEX. ADMIN. CODE §§ 328.57(c)(1) and 330.15©, and TEX. HEALTH & SAFETY CODE § 361.112(a) and ©.
9. In determining the amount of an administrative penalty, TEX. WATER CODE ANN. § 7.053 requires the Commission to consider several factors including:

- (a) Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - (b) The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - (c) The history and extent of previous violations by the violator;
 - (d) The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - (e) The amount necessary to deter future violations; and
 - (f) Any other matters that justice may require.
10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
11. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE ANN. § 7.053, and the Commission's Penalty Policy, the Executive Director properly calculated the penalties for the alleged violation, and a total administrative penalty of \$17,500 is justified and should be assessed against Respondent.
12. Based on the above Findings of Fact, Respondent should be required to take the corrective action measures that the Executive Director recommends.

III. ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Within 30 days after the effective date of this Commission Order, Gregg Dentler & Hugh Dentler d/b/a Dentlers Tire Shop (Respondent) shall pay an administrative penalty in the amount of \$17,500 for violation of 30 TEX. ADMIN. CODE §§ 328.57(c)(1) and 330.15©, and TEX. HEALTH & SAFETY CODE § 361.112(a) and ©. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Gregg Dentler & Hugh Doug Dentler d/b/a Dentlers Tire Shop; TCEQ Docket No. 2005-1052-MSW-E;" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Immediately upon the effective date of the Commission Order, Respondent shall:
 - (a) Cease to cause, suffer, allow, or permit any additional municipal solid waste - specifically used and/or scrap tires and tire pieces - to be stored, processed, or disposed of in violation of 30 TEX. ADMIN. CODE § 330.5 (relating to General Prohibitions); and
 - (b) Cease transporting used and/or scrap tires until such time as a registration or other authorization is obtained, in accordance with 30 TEX. ADMIN. CODE § 328.57.

3. Within 15 days after the effective date of the Commission Order, Respondent shall locate and retrieve all used and/or scrap tires which Respondent, and/or any person(s) acting on behalf of Respondent, disposed of at unauthorized locations, and shall properly dispose of them at an authorized facility.
4. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with ordering provision Nos. 2 (a) and (b) and 3. The certification shall be notarized by a State of Texas Notary Public and include the following 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.”

5. Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Brad Genzer, Waste Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
NRC Building, Suite 1200
6300 Ocean Drive, Unit 5839
Corpus Christi, Texas 78412-5839.

6. 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 Commission Order.
7. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
8. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
9. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent each of the parties.
10. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

In re: Gregg and Hugh Doug Dentler dba Dentlers Tire Shop
TCEQ Docket No. 2005-1052-MSW-E
SOAH Docket No. 582-08-0856
Page 11

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Buddy Garcia, Chairman
For the Commission

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 19, 2008

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: Gregg Dentler & Hugh Doug Dentler dba Dentlers Tire Shop
TCEQ Docket No. 2005-1052-MSW-E
SOAH Docket No. 582-08-0859

Ms. Castañuela,

Enclosed please find the original and 11 copies of "Attachment B" to the Executive Director's proposed modifications, which were filed in this case on March 17, 2008. The attachment was inadvertently omitted from the original filing.

Sincerely,

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Lena Roberts, Attorney
Litigation Division

2008 MAR 19 PM 4:44
CHIEF CLERKS OFFICE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 19, 2008

The Honorable Howard S. Seitzman
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

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TCEQ Docket No. 2005-1052-MSW-E
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Lena Roberts, Attorney
Litigation Division

cc: Respondents
Tom Greimel, Enforcement Division, TCEQ, MC 128
Blas Coy, Public Interest Counsel, TCEQ, MC 103

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



DEFAULT ORDER Assessing Administrative Penalties Against
and Ordering Corrective Action by Gregg
Dentler & Hugh Doug Dentler d/b/a Dentlers
Tire Shop; TCEQ Docket No. 2005-1052-
MSW-E; SOAH Docket No. 582-08-0859

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4. In the EDPRP, the Executive Director alleged that Respondent violated 30 TEX. ADMIN. CODE § 328.57(c)(1), by failing to register with the TCEQ a used or scrap tire transporter operation prior to conducting business.

5. For the violation alleged in Finding of Fact No. 4, the Executive Director seeks a penalty of \$2,500 on the basis that this was a single event, the violation was a major programmatic violation, and Respondent received an estimated economic benefit of \$4.00 from the violation.
6. In the EDPRP, the Executive Director alleged that Respondent violated 30 TEX. ADMIN. CODE § 330.15(c) and TEX. HEALTH & SAFETY CODE § 361.112(a) and (c), by causing, suffering, allowing, and permitting the dumping of municipal solid waste without prior written authorization of the Commission. Specifically, Respondent stored and disposed of more than 500 scrap tires at facilities not permitted by the Commission for that purpose, at various locations throughout Nueces County and San Patricio County, Texas, including but not limited to: 8702 Agnes Street, 2802 South Port Avenue, 5321 Agnes Street, 5425 South Staples, and 3802 Morgan, in Corpus Christi, Nueces County; and 20742 Magnolia Street and 113 Virginia, in San Patricio, San Patricio County, Texas.
7. For the violation alleged in Finding of Fact No. 6, the Executive Director seeks a penalty of \$15,000 on the basis that there were six single event violations of this nature, the violation was a minor actual violation, and Respondent received an estimated economic benefit of \$103.00 from the violation.
8. The Executive Director mailed a copy of the EDPRP to Hugh Doug Dentler #61025-180, at USP Pollock, U.S. Penitentiary, P.O. Box 2099, Pollock Louisiana, 71467, on the same date that the EDPRP was filed.

9. The Executive Director mailed a copy of the EDPRP to Gregg Dentler c/o Wilke Tire Service, 1202 South Port Avenue, Corpus Christi, Texas, 78405-2308, on the same date that the EDPRP was filed.
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11. On November 13, 2007, the Executive Director requested the matter be referred to SOAH for hearing.
12. On December 4, 2007, the TCEQ Chief Clerk mailed notice of the scheduled preliminary hearing to Respondent.
13. The notice of hearing:
 - (a) Indicated the time, date, place, and nature of the hearing;
 - (b) Stated the legal authority and jurisdiction for the hearing;
 - (c) Indicated the statutes and rules the Executive Director alleged Respondent violated;
 - (d) Referred to the EDPRP, a copy of which was attached, which indicated the matters asserted by the Executive Director;
 - (e) Advised Respondent, in at least 12-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by legal representative would result in the factual allegations contained in the notice and EDPRP being deemed as true and the relief sought in the notice possibly being granted by default; and
 - (f) Included a copy of the Executive Director's penalty calculation worksheet, which shows how the penalty was calculated for the alleged violations.

14. On January 17, 2008, the ALJ convened the preliminary hearing. Respondent did not appear, nor did a representative of Respondent appear.
15. Based on Respondent's failure to appear at the hearing, the Executive Director moved for a default against Respondent in which all of the Executive Director's allegations would be deemed admitted as true, the penalties the Executive Director seeks would be assessed against Respondent, and Respondent would be ordered to take the corrective action recommended by the Executive Director. The ALJ granted the motion.

II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE ANN. § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Water Code or of the Texas Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under TEX. WATER CODE ANN. § 7.052, a penalty may not exceed \$10,000 per violation, per day for the violations alleged in this proceeding.
3. Additionally, the Commission may order the violator to take corrective action. TEX. WATER CODE ANN. § 7.073.
4. As required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations or the penalties or corrective actions proposed therein.

5. As required by TEX. GOV'T CODE ANN. § 2001.052; TEX. WATER CODE ANN. § 7.058; 1 TEX. ADMIN. CODE § 155.27; and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalties. Additionally, Respondent was notified, in accordance with 1 TEX. ADMIN. CODE §155.55, that if Respondent failed to appear at the hearing, a default could be rendered against Respondent in which all the allegations contained in the notice of hearing would be deemed admitted as true.
6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
7. Based on the above Findings of Fact and Conclusions of Law:
 - (a) A default should be entered against Respondent in accordance with 1 TEX. ADMIN. CODE § 155.55 and 30 TEX. ADMIN. CODE §§ 70.106(b) and 80.113(d); and
 - (b) The allegations contained in the notice of the hearing, including those in the EDPRP attached thereto, are admitted as true.
8. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 30 TEX. ADMIN. CODE §§ 328.57(c)(1) and 330.15(c), and TEX. HEALTH & SAFETY CODE § 361.112(a) and (c).
9. In determining the amount of an administrative penalty, TEX. WATER CODE ANN. § 7.053 requires the Commission to consider several factors including:

- (a) Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - (b) The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - (c) The history and extent of previous violations by the violator;
 - (d) The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - (e) The amount necessary to deter future violations; and
 - (f) Any other matters that justice may require.
10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
 11. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE ANN. § 7.053, and the Commission's Penalty Policy, the Executive Director properly calculated the penalties for the alleged violation, and a total administrative penalty of \$17,500 is justified and should be assessed against Respondent.
 12. Based on the above Findings of Fact, Respondent should be required to take the corrective action measures that the Executive Director recommends.

III. ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Within 30 days after the effective date of this Commission Order, Gregg Dentler & Hugh Dentler d/b/a Dentlers Tire Shop (Respondent) shall pay an administrative penalty in the amount of \$17,500 for violation of 30 TEX. ADMIN. CODE §§ 328.57(c)(1) and 330.15©, and TEX. HEALTH & SAFETY CODE § 361.112(a) and (c). The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Gregg Dentler & Hugh Doug Dentler d/b/a Dentlers Tire Shop; TCEQ Docket No. 2005-1052-MSW-E;" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Immediately upon the effective date of the Commission Order, Respondent shall:
 - (a) Cease to cause, suffer, allow, or permit any additional municipal solid waste - specifically used and/or scrap tires and tire pieces - to be stored, processed, or disposed of in violation of 30 TEX. ADMIN. CODE § 330.5 (relating to General Prohibitions); and
 - (b) Cease transporting used and/or scrap tires until such time as a registration or other authorization is obtained, in accordance with 30 TEX. ADMIN. CODE § 328.57.

3. Within 15 days after the effective date of the Commission Order, Respondent shall locate and retrieve all used and/or scrap tires which Respondent, and/or any person(s) acting on behalf of Respondent, disposed of at unauthorized locations, and shall properly dispose of them at an authorized facility.
4. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with ordering provision Nos. 2 (a) and (b) and 3. The certification shall be notarized by a State of Texas Notary Public and include the following 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.”

5. Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Brad Genzer, Waste Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
NRC Building, Suite 1200
6300 Ocean Drive, Unit 5839
Corpus Christi, Texas 78412-5839.

6. 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 Commission Order.
7. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
8. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
9. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to each of the parties.
10. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

In re: Gregg and Hugh Doug Dentler dba Dentlers Tire Shop
TCEQ Docket No. 2005-1052-MSW-E
SOAH Docket No. 582-08-0856
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ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Buddy Garcia, Chairman
For the Commission