

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

March 12, 2008

Les Trobman, General Counsel  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin Texas 78711-3087

CHIEF CLERKS OFFICE

2008 MAR 12 PM 4:08

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: 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 d/b/a Dentlers Tire Shop; Rn 104596226

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the original documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than April 1, 2008. Any replies to exceptions or briefs must be filed in the same manner no later than April 11, 2008.

This matter has been designated **TCEQ Docket No. 2005-1052-MSW-E; SOAH Docket No. 582-08-0859**. All documents to be filed must clearly reference these assigned docket numbers. Copies of all exceptions, briefs and replies must be served promptly on the State Office of Administrative Hearings and all parties. Certification of service to the above parties and an **original and eleven copies** shall be furnished to the Chief Clerk of the Commission. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard S. Seitzman".

Howard S. Seitzman  
Administrative Law Judge

HSS/pp  
Enclosures  
cc: Mailing List

William P. Clements Building  
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025  
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994  
<http://www.soah.state.tx.us>

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**AUSTIN OFFICE**  
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**SERVICE LIST**

**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)  
**STYLE/CASE:** GREGG DENTLER & HUGH DOUG DENTLER / DENTLERS  
TIRE SHOP  
**SOAH DOCKET NUMBER:** 582-08-0859  
**REFERRING AGENCY CASE:** 2005-1052-MSW-E

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE**  
**ALJ HOWARD S. SEITZMAN**

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**REPRESENTATIVE / ADDRESS**

**PARTIES**

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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TCEQ EXECUTIVE DIRECTOR

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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HUGH DOUG DENTLER  
USP POLLACK, US PENITENTARY  
P.O. BOX 2099  
POLLOCK, LA 71467

USP POLLACK, US PENITENTARY

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GREGG DENTLER  
C/O WILKE TIRE SERVICE  
1202 SOUTH PORT AVENUE  
CORPUS CHRISTI, TX 78405-2308

C/O WILKE TIRE SERVICE

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xc: Docket Clerk, State Office of Administrative Hearings

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

2008 MAR 12 PM 4:09

IN THE MATTER OF AN  
ENFORCEMENT ACTION AGAINST  
GREGG DENTLER & HUGH DOUG  
DENTLER D/B/A DENTLERS TIRE  
SHOP;

RN104596226

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BEFORE THE CHIEF CLERKS OFFICE  
STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to assess seventeen thousand five hundred dollars (\$17,500.00) in administrative penalties against, and require corrective actions by, Gregg Dentler and Hugh Dentler d/b/a Dentlers Tire Shop (collectively Dentlers Tire or Respondent) for violations of 30 TEX. ADMIN. CODE §§ 328.57(c)(1) and 330.15(c) and TEX. HEALTH & SAFETY CODE § 361.112(a) and (c). The ED alleges that Respondent (1) operates a used and scrap tire transport and disposal service in Corpus Christi, Texas, but failed to register the operation prior to conducting business, and (2) disposed of scrap tires at various locations that are not permitted by the Commission for that purpose.

After being properly notified, Respondent failed to appear at the preliminary hearing on January 17, 2008, concerning the ED's allegations and recommendation. Therefore, as set out below, the Administrative Law Judge (ALJ) recommends that the Commission enter a default order against Respondent, deem as true the facts alleged by the ED, assess a penalty of \$17,500.00 against, and require certain corrective actions by, Respondent.

## II. JURISDICTION AND VIOLATIONS

Respondent owns and operates a used and scrap tire facility 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. 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, the following violations were documented:

- a. 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; and
- b. 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.

Respondent received notice of the violations on or about June 14, 2005.

Under TEX. WATER CODE ANN. § 7.051, the Commission is authorized to assess an administrative penalty against a person who violates a provision of the Texas Water Code within the Commission's jurisdiction or a rule adopted or an order or permit issued thereunder. As pertinent

to this case, the penalty may not exceed \$10,000 per day of violation.<sup>1</sup> Additionally, the Commission may order the violator to take corrective action.<sup>2</sup>

In this case, Respondent is alleged to have violated various provisions under Title 30 of the Texas Administrative Code, which contains rules adopted within the Commission's authority and various provisions of the Texas Health & Safety Code. Each of these is a basis for the imposition of administrative penalties or corrective action under TEX. WATER CODE ANN. §§ 7.051 and 7.073. Thus, the Commission has jurisdiction over Respondent and authority to assess penalties and order the corrective action requested by the ED. Further, the State Office of Administrative Hearings (SOAH) has jurisdiction over this matter as reflected in the Conclusions of Law that are in the attached Default Order.

### III. DEFAULT

A default in this case is entered pursuant to 1 TEX. ADMIN. CODE § 155.55. That rule specifies that any default entered under the rule shall be issued only upon adequate proof that proper notice has been provided to the defaulting party. As set forth in the Findings of Fact and Conclusions of Law, the ALJ finds that the requisite notice has been provided to Respondent in this proceeding, in accordance with TEX. GOV'T CODE ANN. § 2001.052, 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, and 30 TEX. ADMIN. CODE §§ 1.11 and 39.25.

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<sup>1</sup> TEX. WATER CODE ANN. § 7.052(c).

<sup>2</sup> TEX. WATER CODE ANN. § 7.073.

Therefore, the ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law set forth in the attached Default Order assessing an administrative penalty of \$17,500.00 against Respondent for the violations in issue and directing Respondent to take the specified corrective actions.

**SIGNED March 12, 2008.**



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**HOWARD S. SEITZMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**DEFAULT ORDER** Assessing Administrative Penalties Against  
and Ordering Corrective Action by Gregg  
Dentler & Hugh 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 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 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 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(c), and TEX. HEALTH & SAFETY CODE § 361.112(a) and (c).
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, 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 the previous finding, 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 § 70.160(b); 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.

**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(c), and TEX. HEALTH & SAFETY CODE § 361.112(a) and (c). 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 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.

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.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Buddy Garcia, Chairman  
For the Commission