

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 52185
Lee Ann Potter and Chad Simons, d/b/a Tire Gauge
RN109021477
Docket No. 2016-0547-MSW-E

Order Type:

Default Order

Media:

MSW – used tires

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

2204 Farm-to-Market Road 1431, Kingsland, Llano County

Type of Operation:

used tire shop and scrap tire transporter facility

Other Significant Matters:

Additional Pending Enforcement Actions: None
Past-Due Penalties: \$3,718.62 (2011-0491-MSW-E; referred for collection)
\$15,000 (2013-1993-MSW-E; referred to the AG)
Past-Due Fees: None
Other: None
Interested Third-Parties: None

Texas Register Publication Date: October 21, 2016

Comments Received: None

Penalty Information

Total Penalty Assessed: \$24,833

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$24,833

Compliance History Classifications:

Person/CN –Unsatisfactory (Both Respondents)
Site/RN – N/A

Major Source: Yes

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 52185
Lee Ann Potter and Chad Simons, d/b/a Tire Gauge
RN109021477
Docket No. 2016-0547-MSW-E

Investigation Information

Complaint Date(s): February 1, 2016
Complaint Information: Alleged that a tire transporter was dumping scrap tires without authorization.

Date(s) of Investigation: February 5 - 16, 2016

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

Date(s) of NOE(s): April 6, 2016

Violation Information

1. Failed to notify the agency of any change regarding the used tire transporter and generator registrations within 15 days of the occurrence of the change [30 TEX. ADMIN. CODE §§ 328.55(4) and 328.56(a)(2)].
2. Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste (approx. 1,577 scrap tires) [30 TEX. ADMIN. CODE §§ 330.15(a) and (c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

N/A – Respondents no longer operate the Facility as of January 3, 2016.

Litigation Information

Date Petition(s) Filed: August 23, 2016

Date Green Card(s) Signed: August 25, 2016

Date Answer(s) Filed: N/A

Contact Information

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

TCEQ Enforcement Coordinator: Danielle Porrás, Enforcement Division, (713) 767-3682

TCEQ Regional Contact: David Mann, Austin Regional Office, (512) 339-2929

Respondent Contact: Lee Ann Potter, 1521 Kingsview Drive, Granite Shoals, Texas 78654
Chad Simons, 1521 Kingsview Drive, Granite Shoals, Texas 78654

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	11-Apr-2016		
	PCW	16-May-2016	Screening	14-Apr-2016
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Lee Ann Potter and Chad Simons, dba Tire Gauge
Reg. Ent. Ref. No.	RN109021477
Facility/Site Region	11-Austin
Major/Minor Source	Major

CASE INFORMATION		No. of Violations	2
Enf./Case ID No.	52185	Order Type	Findings
Docket No.	2016-0547-MSW-E	Government/Non-Profit	No
Media Program(s)	Waste Tires	Enf. Coordinator	Danielle Porras
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$15,000
---	-------------------	----------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	10.0%	Adjustment	Subtotals 2, 3, & 7	\$1,500
---------------------------	-------	------------	--------------------------------	---------

Notes: Enhancement due to unsatisfactory performer classification.

Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
--------------------	----	------	-------------	-------------------	-----

Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
--	-------------------	-----

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

Total EB Amounts: \$8,344
 Estimated Cost of Compliance: \$8,085
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$16,500
-----------------------------	-----------------------	----------

OTHER FACTORS AS JUSTICE MAY REQUIRE	50.5%	Adjustment	\$8,333
---	-------	------------	---------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided costs of compliance associated with violation no. 2.

Final Penalty Amount	\$24,833
-----------------------------	----------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$24,833
-----------------------------------	-------------------------------	----------

DEFERRAL	0.0%	Reduction	Adjustment	\$0
-----------------	------	-----------	------------	-----

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$24,833
------------------------	----------

Screening Date 14-Apr-2016

Docket No. 2016-0547-MSW-E

PCW

Respondent Lee Ann Potter and Chad Simons, dba Tire Gauge

Policy Revision 4 (April 2014)

Case ID No. 52185

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN109021477

Media [Statute] Waste Tires

Enf. Coordinator Danielle Porras

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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%
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)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement due to unsatisfactory performer classification.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 10%

Screening Date 14-Apr-2016 **Docket No.** 2016-0547-MSW-E **PCW**
Respondent Lee Ann Potter and Chad Simons, dba Tire Gauge *Policy Revision 4 (April 2014)*
Case ID No. 52185 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN109021477
Media [Statute] Waste Tires
Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 328.55(4) and 328.56(a)(2)

Violation Description

Failed to notify the agency of any change regarding the used tire transporter and generator registrations within 15 days of the occurrence of the change. Specifically, the registrations were not updated to reflect the current location and operational status of the used tire shop and scrap tire transporter facility.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			15.0%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 2 69 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$7,500

Two single events (one per registration) are recommended.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$11 **Violation Final Penalty Total** \$12,417

This violation Final Assessed Penalty (adjusted for limits) \$12,417

Economic Benefit Worksheet

Respondent Lee Ann Potter and Chad Simons, dba Tire Gauge
Case ID No. 52185
Reg. Ent. Reference No. RN109021477
Media Waste Tires
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$100	5-Feb-2016	6-Jan-2017	0.92	\$0	\$6	\$6
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	5-Feb-2016	6-Jan-2017	0.92	\$5	n/a	\$5

Notes for DELAYED costs
 Estimated cost to accurately prepare and submit a tire registration status update form for the scrap tire transporter and generator registrations. The Date Required is the investigation date and the 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 \$200

TOTAL \$11

Screening Date 14-Apr-2016

Docket No. 2016-0547-MSW-E

PCW

Respondent Lee Ann Potter and Chad Simons, dba Tire Gauge

Policy Revision 4 (April 2014)

Case ID No. 52185

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN109021477

Media [Statute] Waste Tires

Enf. Coordinator Danielle Porras

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 330.15(a) and (c)

Violation Description

The Respondents caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste. Specifically, approximately 1,577 scrap tires (158 cubic yards) were disposed of on the ground at the Facility.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1

69 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

One quarterly event is recommended from the February 5, 2016 investigation to the April 14, 2016 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	

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8,333

Violation Final Penalty Total \$12,417

This violation Final Assessed Penalty (adjusted for limits) \$12,417

Economic Benefit Worksheet

Respondent Lee Ann Potter and Chad Simons, dba Tire Gauge
Case ID No. 52185
Reg. Ent. Reference No. RN109021477
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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0
Notes for DELAYED costs							

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]	\$7,885	15-Oct-2015	3-Jan-2016	1.14	\$448	\$7,885	\$8,333
Other (as needed)				0.00	\$0	\$0	\$0
Notes for AVOIDED costs	Estimated avoided cost to remove the waste tires (\$5/tire) and dispose of them at a facility authorized to accept the waste tires. The Date Required is the date that the lease was signed at the Facility and the Final Date is the date of eviction from the Facility.						

Approx. Cost of Compliance \$7,885

TOTAL \$8,333

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

Compliance History Report for CN603664939, RN109021477, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator: CN603664939, Lee Ann Potter **Classification:** UNSATISFACTORY **Rating:** 142.50

Regulated Entity: RN109021477, Tire Gauge **Classification:** NOT APPLICABLE **Rating:** N/A

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

CH Group: 14 - Other

Location: 2204 FM 1431 KINGSLAND, TX 78639, LLANO COUNTY

TCEQ Region: REGION 11 - AUSTIN

ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R11109021477

Compliance History Period: September 01, 2010 to August 31, 2015 **Rating Year:** 2015 **Rating Date:** 09/01/2015

Date Compliance History Report Prepared: April 14, 2016

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 14, 2011 to April 14, 2016

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

Name: Danielle Porras **Phone:** (713) 767-3682

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

Compliance History Report for CN604642587, RN109021477, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator: CN604642587, Chad Simons **Classification:** UNSATISFACTORY **Rating:** 142.50

Regulated Entity: RN109021477, Tire Gauge **Classification:** NOT APPLICABLE **Rating:** N/A

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

CH Group: 14 - Other

Location: 2204 FM 1431 KINGSLAND, TX 78639, LLANO COUNTY

TCEQ Region: REGION 11 - AUSTIN

ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R11109021477

Compliance History Period: September 01, 2010 to August 31, 2015 **Rating Year:** 2015 **Rating Date:** 09/01/2015

Date Compliance History Report Prepared: April 14, 2016

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 14, 2011 to April 14, 2016

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

Name: Danielle Porras **Phone:** (713) 767-3682

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

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
LEE ANN POTTER AND
CHAD SIMONS,
DBA TIRE GAUGE;
RN109021477**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2016-0547-MSW-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondents made the subject of this Order are Lee Ann Potter and Chad Simons, d/b/a Tire Gauge ("Respondents").

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

FINDINGS OF FACT

1. Respondents operated a used tire shop and scrap tire transporter facility located at 2204 Farm-to-Market 1431 in Kingsland, Llano County, Texas (the "Facility"). The Facility contains and/or involves the management of municipal solid waste ("MSW"), including scrap tires, as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on February 5 - 16, 2016, an investigator documented that Respondents:
 - a. Failed to notify the agency of any change regarding the used tire transporter and generator registrations within 15 days of the occurrence of the change. Specifically, the registrations were not updated to reflect the current location and operational status of the used tire shop and scrap tire transporter facility; and
 - b. Caused, suffered, allowed, or permitted the unauthorized disposal of MSW. Specifically, approximately 1,577 scrap tires (158 cubic yards) were disposed of on the ground at the Facility.
3. The Executive Director recognizes that Respondents no longer operate the Facility as of January 3, 2016.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Lee Ann Potter and Chad Simons, d/b/a Tire Gauge" (the "EDPRP") in the TCEQ Chief Clerk's office on August 23, 2016.

5. By letter dated August 23, 2016, sent to each Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served each Respondent with notice of the EDPRP. According to the return receipt "green cards," each Respondent received notice of the EDPRP on August 25, 2016, as evidenced by the signatures on the cards.
6. More than 20 days have elapsed since each Respondent received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondents failed to notify the agency of any change regarding the used tire transporter and generator registrations within 15 days of the occurrence of the change, in violation of 30 TEX. ADMIN. CODE §§ 328.55(4) and 328.56(a)(2).
3. As evidenced by Finding of Fact No. 2.b., Respondents caused, suffered, allowed, or permitted the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(a) and (c).
4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served each Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
5. As evidenced by Finding of Fact No. 6, Respondents failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of twenty-four thousand eight hundred thirty-three dollars (\$24,833.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondents are assessed an administrative penalty in the amount of twenty-four thousand eight hundred thirty-three dollars (\$24,833.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondents' compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: Lee Ann Potter and Chad Simons, d/b/a Tire Gauge; Docket No. 2016-0547-MSW-E" to:

Financial Administration Division
Revenue Operations Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondents.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. If Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.

8. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

AFFIDAVIT OF LENA ROBERTS

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

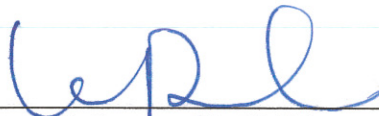
§

"My name is Lena Roberts. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Lee Ann Potter and Chad Simons, d/b/a Tire Gauge" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on August 23, 2016.

The EDPRP was mailed to each Respondent's last known address on August 23, 2016, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green cards," each Respondent received notice of the EDPRP on August 25, 2016, as evidenced by the signatures on the cards.

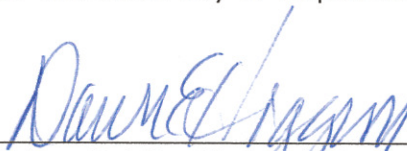
More than 20 days have elapsed since each Respondent received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing."



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

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

Subscribed and sworn to before me on this 30th day of September, A.D. 2016.



Notary Public, State of Texas