

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 53067
Martin Parker dba Bird's Tire Service
RN100645985
Docket No. 2016-1433-MSW-E

Order Type:

Default Order (SOAH preliminary hearing)

Media:

MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

3502 East Seventh Street, Austin, Travis County

Type of Operation:

used tire sales and repair shop

Other Significant Matters:

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

Texas Register Publication Date: November 2, 2018

Comments Received: None

Penalty Information

Total Penalty Assessed: \$5,000

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$5,000

Compliance History Classifications:

Person/CN – Satisfactory
Site/RN – Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 53067
Martin Parker dba Bird's Tire Service
RN100645985
Docket No. 2016-1433-MSW-E

Investigation Information

Complaint Date(s): May 18, 2016
Complaint Information: Scrap tires are allegedly being stored at a site.
Date(s) of Investigation: June 3, 2016
Date(s) of NOV(s): N/A
Date(s) of NOE(s): August 2, 2016

Violation Information

1. Failed to use manifests, work orders, invoices, or other records to document the removal and management of all scrap tires generated on-site [30 TEX. ADMIN. CODE § 328.56(c)].
2. Failed to register as a scrap tire facility before processing scrap tires. Specifically, Respondent was cutting scrap tires without authorization [30 TEX. ADMIN. CODE § 328.63(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
None

Technical Requirements:

1. Within 30 days:
 - a. Obtain a scrap tire management registration; and
 - b. Begin retaining all original manifests, invoices, or other documents used to support activities related to the removal and management of all scrap tires generated on-site.
2. Within 45 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1.a. and 1.b.

Litigation Information

Date Petition(s) Filed: June 22, 2017
Date Green Card(s) Signed: Unclaimed
Date Answer(s) Filed: November 15, 2017
SOAH Referral Date: May 18, 2018
Hearing Date(s):
Preliminary hearing: July 12, 2018 (defaulted)

Contact Information

TCEQ Attorneys: John S. Mercurief II, Litigation Division, (512) 239-3400
Sheldon Wayne, Public Interest Counsel, (512) 239-6363
TCEQ Litigation Division Agenda Coordinator: Janice Hernandez, (512) 239-2575
TCEQ Enforcement Coordinator: Rahim Momin, Enforcement Division, (512) 239-1337
TCEQ Regional Contact: David Mann, Austin Regional Office, (512) 339-2929
Respondent Contact: Martin Parker, 130 Donlee Drive, Cedar Creek, Texas 78612
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	8-Aug-2016	Screening	23-Aug-2016	EPA Due	
	PCW	23-Feb-2017				

RESPONDENT/FACILITY INFORMATION

Respondent	Martin Parker dba Bird's Tire Service				
Reg. Ent. Ref. No.	RN100645985				
Facility/Site Region	11-Austin	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	53067	No. of Violations	2
Docket No.	2016-1433-MSW-E	Order Type	1660
Media Program(s)	Waste Tires	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	James Baldwin
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
---	-------------------	---------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Adjustment	Subtotals 2, 3, & 7	\$0
---------------------------	-----------------	--------------------------------	-----

Notes	No adjustment for compliance history.
--------------	---------------------------------------

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

Notes	The Respondent does 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	\$466
Estimated Cost of Compliance	\$10,100

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,000
-----------------------------	-----------------------	---------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
--------------	--

Final Penalty Amount	\$5,000
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,000
-----------------------------------	-------------------------------	---------

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

Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral not offered for non-expedited settlement.
--------------	--

PAYABLE PENALTY	\$5,000
------------------------	---------

Screening Date 23-Aug-2016

Docket No. 2016-1433-MSW-E

PCW

Respondent Martin Parker dba Bird's Tire Service

Policy Revision 4 (April 2014)

Case ID No. 53067

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN100645985

Media [Statute] Waste Tires

Enf. Coordinator James Baldwin

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)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 23-Aug-2016

Docket No. 2016-1433-MSW-E

PCW

Respondent Martin Parker dba Bird's Tire Service

Policy Revision 4 (April 2014)

Case ID No. 53067

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN100645985

Media [Statute] Waste Tires

Enf. Coordinator James Baldwin

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 328.56(c)

Violation Description

Failed to retain and make available upon request by agency personnel original manifests, work orders, invoices, or other documentation used to support activities related to the removal and management of all scrap tires generated on-site.

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 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

81 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is 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 Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

Economic Benefit Worksheet

Respondent Martin Parker dba Bird's Tire Service
Case ID No. 53067
Reg. Ent. Reference No. RN100645985
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)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$100	3-Jun-2016	6-May-2017	0.92	\$5	n/a	\$5
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to retain all original manifests, invoices, or other documents used to support activities related to the removal and management of all scrap tires on-site. 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 \$100

TOTAL \$5

Screening Date 23-Aug-2016

Docket No. 2016-1433-MSW-E

PCW

Respondent Martin Parker dba Bird's Tire Service

Policy Revision 4 (April 2014)

Case ID No. 53067

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN100645985

Media [Statute] Waste Tires

Enf. Coordinator James Baldwin

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 328.63(c)

Violation Description

Failed to obtain a scrap tire facility registration prior to processing tires. Specifically, the Respondent was processing scrap tires without a registration.

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 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3

81 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

Three monthly events are recommended from the June 3, 2016 investigation date, to the August 23, 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 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 \$462

Violation Final Penalty Total \$3,750

This violation Final Assessed Penalty (adjusted for limits) \$3,750

Economic Benefit Worksheet

Respondent Martin Parker dba Bird's Tire Service
Case ID No. 53067
Reg. Ent. Reference No. RN100645985
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	\$10,000	3-Jun-2016	6-May-2017	0.92	\$462	n/a	\$462
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a scrap tire management registration for the processing of scrap tires. 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

\$10,000

TOTAL

\$462

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.



TCEQ Compliance History Report

Compliance History Report for CN604773796, RN100645985, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator: CN604773796, Parker, Martin **Classification:** SATISFACTORY **Rating:** 9.00

Regulated Entity: RN100645985, Bird's Tire Service **Classification:** SATISFACTORY **Rating:** 9.00

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 3502 E 7TH STREET, AUSTIN, TX 78702-4034, TRAVIS COUNTY

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):

MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER **TIRES REGISTRATION** 6200910
R11100645985

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

Date Compliance History Report Prepared: August 22, 2016

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 22, 2011 to August 22, 2016

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

Name: James Baldwin

Phone: (512) 239-1337

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

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
MARTIN PARKER DBA
BIRD'S TIRE SERVICE;
RN100645985**

**§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2016-1433-MSW-E

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

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

FINDINGS OF FACT

1. Respondent owns and operates a used tire sales and repair shop located at 3502 East Seventh Street in Austin, Travis 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 June 3, 2016, an investigator documented that Respondent:
 - a. Failed to use manifests, work orders, invoices, or other records to document the removal and management of all scrap tires generated on-site; and
 - b. Failed to register as a scrap tire facility before processing scrap tires. Specifically, Respondent was cutting scrap tires without authorization.
3. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Martin Parker dba Bird's Tire Service" (the "EDPRP") in the TCEQ Chief Clerk's office on June 22, 2017.
4. Respondent filed an answer requesting a hearing on November 15, 2017, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on May 18, 2018.
5. On June 21, 2018, the TCEQ Chief Clerk mailed notice of the July 12, 2018, preliminary hearing via certified mail, return receipt requested, and via first-class mail, postage prepaid, to Respondent.

6. On July 12, 2018, the Administrative Law Judge ("ALJ") convened the preliminary hearing. Respondent failed to appear, and the Executive Director requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.
7. On July 12, 2018, the ALJ entered a finding that Respondent was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No. 1 so that TCEQ may dispose of this case on a default basis.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a, Respondent failed to use manifests, work orders, invoices, or other records to document the removal and management of all scrap tires generated on-site, in violation of 30 TEX. ADMIN. CODE § 328.56(c).
3. As evidenced by Finding of Fact No. 2.b, Respondent failed to register as a scrap tire facility before processing scrap tires, in violation of 30 TEX. ADMIN. CODE § 328.63(c).
4. As evidenced by Finding of Fact No. 4, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
5. As evidenced by Finding of Fact No. 7, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.105(a) and (c)(3), 155.401 and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.
6. As evidenced by Findings of Fact Nos. 6 and 7, Respondent failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4) and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106(b).
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of five thousand dollars (\$5,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of five thousand dollars (\$5,000.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: Martin Parker dba Bird's Tire Service; Docket No. 2016-1433-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. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, cease the processing of any additional used/scrap tires at the Facility until authorization is obtained.
 - b. Within 30 days after the effective date of this Order:
 - i. Obtain a scrap tire management registration; and
 - ii. Begin retaining all original manifests, invoices, or other documents used to support activities related to the removal and management of all scrap tires generated on-site, in accordance with 30 TEX. ADMIN. CODE § 328.56.
 - c. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a through 3.b.ii. The certification shall be signed by the Respondent and shall 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
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

9. 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.
10. 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.
11. 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 JOHN S. MERCULIEF II

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Martin Parker dba Bird's Tire Service" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on June 22, 2017.

Respondent filed an answer requesting a hearing on November 15, 2017, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on May 18, 2018. On June 21, 2018, the TCEQ Chief Clerk mailed notice of the July 12, 2018 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

Respondent failed to appear at the hearing on July 12, 2018. At that hearing, I requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the TCEQ for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, issued on July 12, 2018, so that TCEQ may dispose of this case on a default basis."

John S. Mercurief II, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Subscribed and sworn to before me on this 4th day of October, A.D. 2018.



NOTARY WITHOUT BOND

Notary Public, State of Texas