

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
)
Five Points Grocery & Tires, L.L.C.) Order No. 16-XXX-ST
Receiver Reg. #S0000010301)
7325 County Road 87)
Moulton, Lawrence County, Alabama)

FINDINGS OF FACTS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.), the Alabama Scrap Tire Environmental Quality Act, Ala. Code §§ 22-40A-1 to 22-40A-24, as amended, and the ADEM Administrative Code promulgated hereunder, the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") makes the following finding of facts:

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
2. Five Points Grocery & Tires, L.L.C. (hereinafter "the Registrant") is a registered Class One Scrap Tire Receiver facility located at 7325 County Road 87, Lawrence County, Alabama, which is the subject of this administrative order.
3. Pursuant to Ala. Code § 22-40A-11, the Department is the state agency authorized to administer and enforce the provisions of the Alabama Scrap Tire Environmental Quality Act, Ala. Code §§ 22-40A-1 to 22-40A-24, as amended.
4. On April 17, 2013, the Department issued Class One Receiver Registration No. S0000010301 to the Registrant for a scrap tire facility located at 7325 County Road 87, Moulton, Lawrence County, Alabama.
5. On August 13, 2015, Department personnel conducted an inspection of the Registrant's facility to determine compliance with Division 4 of the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin. Code r. 335-4-5-.01 requires that no receiver may expose scrap tires to the elements for more than thirty (30) days. If scrap tires are exposed to the elements for more than seven (7) days, a Vector Control Plan shall be prepared and implemented. Department personnel documented that the Registrant had exposed scrap tires to the elements for more than thirty days and had failed to develop and implement a vector control plan.

b. ADEM Admin. Code r. 335-4-5-.03 requires a receiver shall submit a summary of the previous quarter activities to ADEM utilizing ADEM form 539. These reports shall be submitted to ADEM no later than the twenty-eighth day of the month following the end of the quarter for which the report is submitted. The Registrant has failed to submit a quarterly report for the April through June 2015 reporting period.

6. On September 14, 2015, the Department issued a Warning Letter for the violations documented during the August 13, 2015, inspection.

7. The Department did not receive a response to the September 14, 2015, Warning Letter.

8. On October 23, 2015, the Department issued a Notice of Violation (hereinafter "NOV") for the violations documented during the August 13, 2015, inspection and for failure to submit a quarterly report for the July through September 2015 reporting period.

9. The Department has not received a response to the October 23, 2015, NOV.

10. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Registrant; the economic benefit which delayed compliance may confer upon the Registrant; the nature, extent and degree of success of the Registrant's efforts to minimize or mitigate the effects of such violation upon the environment; the Registrant's history of previous violations; and the ability of the Registrant to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order

issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Registrant did not comply with provisions of ADEM Admin. Code div. 335-4. The Department has no evidence of any irreparable harm to the environment. Exposing tires to the elements for longer than thirty days and failing to implement a vector control plan may pose a threat to human health and to the safety of the public as a result of the potential presence of disease vectors.

B. THE STANDARD OF CARE: The Registrant failed to operate in a manner commensurate with applicable scrap tire regulatory requirements and failed to respond to notices from the Department.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if the Registrant has realized a significant economic benefit as a result of the violations noted.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts employed by the Registrant to mitigate any effects upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Registrant does not have a history of similar violations.

F. THE ABILITY TO PAY: The Registrant has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of

\$3,750.00 is appropriate given the repeat actions of the violator, and in keeping with a penalty range imposed by the Department for similar violations at other facilities, as follows:

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Scrap Tire Facility Operation Requirements	\$0 - \$25,000

ORDER

Based on the foregoing findings of facts and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18) and 22-40A-11 it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, the Registrant shall pay to the Department a civil penalty in the amount of \$3,750.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified check or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference the Registrant's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance date of this Order and continuing each and every day thereafter, the Registrant shall comply with all applicable provisions of ADEM Admin. Code div. 335-4 and Scrap Tire Facility Registration No. S0000010301.

C. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Registrant for the violations cited herein.

D. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against the Registrant for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

E. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

ORDERED and ISSUED this _____ day of _____, 2016.

Lance R. LeFleur

Director

Attachment A

Five Points Grocery & Tires, LLC
Moulton, Lawrence County

Facility ID No. S0000010301

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Tires exposed longer than 30 days	1	\$1,000	\$500	\$0	
Failure to submit quarterly reports	2	\$500	\$250	\$0	
Failure to develop and implement a vector control plan	1	\$1,000	\$500	\$0	
					Total of Three Factors
TOTAL PER FACTOR		\$2,500	\$1,250	\$0	\$3,750

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
	\$0

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$3,750
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$3,750

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.