

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
)
Tiffin Motorhomes, Inc.) CONSENT ORDER NO. XX-XXX-CAP
Red Bay, Franklin County, Alabama)
)
Air Facility ID Number 704-0013)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and Tiffin Motorhomes, Inc. (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a motor home manufacturing facility (hereinafter, the “Facility”) in Red Bay, Franklin County, Alabama (ADEM Air Facility ID Number 704-0013).
2. 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.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The Permittee operates the Facility under the authority of Major Source Operating Permit 704-0013 (hereinafter, the "Permit") issued by the Department on February 10, 2015.

6. Section 2 of the Permit limits air emissions from the Facility to 230 tons of Volatile Organic Compounds (hereinafter, "VOCs"), 24.0 tons of Hazardous Air Pollutants (hereinafter, "HAPs"), and 9.0 tons of any single HAP.

7. Section 5 of the Permit requires the Permittee to keep accurate records of VOCs and HAPs in the paints and materials used at the Facility. This section also states that "Within the first 15 days of each month, compliance with all provisos in this permit will be determined. These records will be maintained for 5 years. Should this facility, at any time, exceed the limits in this permit, the Air Division must be notified in writing within ten (10) days of the identification of the exceedance".

DEPARTMENT'S CONTENTIONS

8. On October 7, 2015, the Department received from the Permittee the Quarterly Emissions Report for the Third Quarter of 2015 (Third Quarter Report), which showed emissions of 24.5 tons of HAP, and 11.3 tons of xylene, the greatest single HAP, for the twelve month period ending September 2015. Additionally, the Third Quarter Report showed that emissions of xylene were 9.7 tons for the twelve month period ending July 2015, and 10.9 tons for the twelve month period ending August 2015. The emissions of xylene exceeding 9.0 tons should have been reported to the Department by July 25, 2015.

9. On October 22, 2015, the Department requested via e-mail that the Permittee confirm that the information contained in the Third Quarter Report was accurate and it responded via a telephone call confirming that it was indeed accurate.

10. On November 4, 2015, the Department issued a Notice of Violation (NOV) to the Permittee for exceeding HAPs emission limits and failure to notify the Department of the exceedance in a timely manner in violation of the Permit.

11. On December 15, 2015, the Department received the reply to the NOV from the Permittee showing that the HAP emissions did not exceed the Permit limits. The corrected Third Quarter 2015 Report showed emissions of 17.5 tons of HAPs, 2.7 tons of xylene, and 5.7 tons of toluene for the twelve month period ending in September 2015. The Permittee attributed the change in HAP emissions amounts reported to it having used incorrect quantities and HAP content to calculate the emissions levels.

12. The Permittee failed to keep accurate records and failed to report monthly exceedances in a timely fashion, in violation of Section 5 of the Permit.

13. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, 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 such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person 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 Department considers the Permittee's failure to keep accurate records, and failure to report the perceived violation of permit limits to be serious violations. However, the Department is not aware of any irreparable harm to the environment resulting from this violation.

B. THE STANDARD OF CARE: The Permittee failed to exhibit the required sufficient standard of care by not reviewing the accuracy of VOC and HAP emission records submitted to the Department.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any significant economic benefits the Permittee may have incurred.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts by the Permittee to minimize or mitigate the effects of the violation on the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee received a Notice of Violation and a Consent Order for exceeding permitted VOC emissions limits in 2008.

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

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

14. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate (*See* "Attachment A", which is made a part of the Department's Contentions).

15. The Department neither admits nor denies Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITEE'S CONTENTIONS

16. The Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms and conditions of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §

22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and the Department has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$12,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified 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

C. The Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing every day thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request,

finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed

Attachment A

Tiffin Motorhomes, Inc.
Red Bay, Franklin County

Facility ID Number 704-0013

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Failure to keep records and report	2	\$5,000	\$5,000	\$5,000	\$15,000.00
TOTAL PER FACTOR		\$5,000.00	\$5,000.00	\$5,000	\$15,000.00

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$3,000.00
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-)	-\$3,000.00

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$15,000.00
Total Adjustments (+/-)	-\$3,000.00
FINAL PENALTY	\$12,000.00

Footnote:

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