

ALABAMA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )  
)  
Tim McCollum dba )  
KMAC Industrial and Recharge )  
2631 F.L. Shuttlesworth Drive )  
Birmingham, Jefferson County, Alabama )  
Registration No. RF07180 )  
\_\_\_\_\_ )

Order No. 19-XXX-SW

***FINDINGS OF FACT***

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18, as amended, and the ADEM Administrative Code promulgated there under, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following findings of fact:

1. Tim McCollum, doing business as KMAC Industrial and Recharge (hereinafter “Registrant” or “Operator”), operates a solid waste processing and recycling facility in Birmingham, Jefferson County, Alabama, which is the subject of this Administrative Order.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended and Ala. Code § 22-27-9(a), as amended, the Department is the state agency authorized to administer and enforce the provisions of the SWRMMA, Ala. Code §§ 22-27-1 to 22-27-18, as amended.

4. On August 7, 2013, the Department issued Solid Waste Processing and Recycling Facility Registration Number RF07180 to the Registrant for the operation of a solid waste recycling facility (hereinafter “Facility”) located at 2631 F.L. Shuttlesworth Drive, Birmingham, Jefferson County, Alabama.

5. On May 15, 2019, the Department sent correspondence to the Registrant requesting information regarding the current operational status of the Facility. The Department requested that a response be submitted within fifteen days of receiving the letter. According to the return receipt, the letter was delivered on May 21, 2019. To date, the Department has not received a response.

6. On June 19, 2019, Department personnel conducted an inspection of the Facility to determine compliance with ADEM Materials Recovery Facility or Recoverable Materials Processing Facility Regulations found in Division 335-13 of the ADEM Admin. Code. Department personnel documented the following violations:

A. ADEM Admin. Code r. 335-13-3-.04(1) requires that on a yearly basis the facility transfer at least 75% of the amount of material accumulated that has been diverted from the solid waste stream or processed for recycling. Each facility must demonstrate through sufficient documentation that it is in compliance with the 75% requirement for the year. Documentation supporting compliance with this requirement was not available for review during the June 19, 2019, inspection, nor was it provided as requested in the May 15, 2019 letter.

B. ADEM Admin. Code r. 335-13-3-.05(5) requires the facility to submit semi-annual reports containing total and monthly summaries of the information provided in subparagraphs (a), (b), and (c) of the ADEM Admin. Code r. 335-13-3-.05(5)(4) to the Department on or before February 15 and August 15 of each year for the preceding six month periods of July 1 – December

31 and January 1 – June 30, respectively. The facility has not uploaded the required reports to ReTrac reporting system since 2013.

C. ADEM Admin. Code r. 335-13-3-.02(2)(d) requires that a registered facility that discontinues receiving, processing or utilizing recovered materials shall notify ADEM within thirty days of a change in operations and request that their registration be terminated. A closure plan must also be submitted in accordance with ADEM Admin. Code r. 335-13-3-.07 and all recovered materials and solid waste shall be removed in accordance with regulations regarding recycling or disposal. Documentation received by the Department noted that the Registrant was no longer accepting materials for processing. The Registrant has not submitted a closure plan, requested the termination of their registration, or removed the recovered materials and solid waste.

7. On August 21, 2019, the Department issued a Notice of Violation (hereinafter “NOV”) to the Registrant addressing the violations noted above.

8. The Department requested that a response be submitted within thirty days of receiving the letter. According to the return receipt, the letter was delivered on August 28, 2019. To date, the Department has not received a response.

9. 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 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. 335-13 at the above site. The Department has no evidence of any irreparable harm to the environment.

B. **THE STANDARD OF CARE:** The Registrant failed to operate in a manner commensurate with applicable Materials Management Facility or Recoverable Materials Processing Facility regulatory requirements at the above site 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 have a history of similar violations at the facility.

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, as amended, as well as the need for

timely and effective enforcement, and has concluded that a civil penalty in the amount of \$24,800.00 is appropriate. (The civil penalty is summarized in Attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Processing and Recycling Facility 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), 22-27-7, and 22-27-11 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 \$24,800.00 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. 335-13 and Registration No. RF07180.

C. That, not later than forty-five days after the issuance of this Order, the Registrant shall submit documentation supporting compliance with the 75% requirement for the year and submit semi-annual reports containing totals and monthly summaries for the last two years. If the facility is no longer actively receiving/processing materials, it therefore is not eligible to be considered a Materials Management Facility or Recoverable Materials Processing Facility and must begin closure as required by ADEM Admin. Code r. 335-13-3-.07. Closure includes submitting a closure plan to the Department and in accordance with ADEM Admin. Code r. 335-13-3-.07(2), all solid waste and recyclable materials, such as super sacks of fluff material, construction/demolition waste, and/or tires, must be removed from the facility and be disposed of properly.

D. 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.

E. 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.

F. 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 \_\_\_\_\_, 2019.

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Lance R. LeFleur  
Director

Attachment A  
 Tim McCollum dba KMAC Industrial and Recharge  
 Birmingham, Jefferson County  
 Registration No. RF07180

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Submit semi-annual reports and monthly summaries	8	\$4,000	\$800	\$0	
Document 75% requirement	1	\$2,500	\$1,000	\$0	
Failure to notify ADEM of a change in operations	1	\$1,000	\$500		
Failure to submit closure plan	1	\$5,000	\$2500		
Failure to remove materials	1	\$5,000	\$2500		
<b>TOTAL PER FACTOR</b>					<b>Total of Three Factors</b>
		\$17,500	\$7,300	\$0	\$24,800

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
<b>Total Adjustments (+/-)</b> <i>Enter at Right</i>	\$0
	\$0

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$24,800
<b>Total Adjustments (+/-)</b>	\$0
<b>FINAL PENALTY</b>	\$24,800

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