

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: _____)

Willie Smiley dba The Place)
203 Highway 80 East)
Selma, Dallas County, Alabama)
Unregistered Scrap Tire Receiver)

Order No. 21- XXX-ST

FINDINGS OF FACTS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, 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-17, as amended.

2. Willie Smiley dba The Place (hereinafter "the Facility") is the operator of an unregistered Class One Scrap Tire Receiver facility located at 203 Highway 80 East, Selma 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 a Failure to Register as a Class One Receiver Letter to the Facility for a scrap tire facility located at 203 Highway 80 East, Selma, Dallas County, Alabama. ADEM Admin Code r. 335-4-3-.01(2) states that Class One Receivers are required to register with ADEM.

5. On August 14 2013, the Department issued a 2nd Failure to Register as a Class One Receiver Letter to the Facility for a scrap tire facility located at 203 Highway 80 East, Selma,

Dallas County, Alabama. ADEM Admin Code r. 335-4-3-.01(2) states that Class One Receivers are required to register with ADEM.

6. In September 2013, The Facility submitted a Class One Receiver Registration Application.

7. On September 11, 2013, the Department issued an Incomplete Registration Application Letter to the Facility. The Facility was given ten days to resubmit a complete application. On October 10, 2013, the Department noted that no response had been received.

8. On February 11, 2016, Department personnel conducted an inspection of the Facility. The Facility continued to operate as a Class One Scrap Tire Receiver and was provided the ADEM Form 537 (Registration Application) during the inspection. Furthermore, it was determined that the Facility had failed to keep collections of the scrap tire fee current with the Alabama Department of Revenue in accordance with ADEM Admin. Code r. 335-3-4-1-.04(4).

9. On March 30, 2016, the Department issued a Failure to Register as a Class One Receiver Letter to the Facility located at 203 Highway 80 East, Selma, Dallas County, Alabama. The facility was given fourteen days to respond and The Department noted no response was received. ADEM Admin Code r. 335-4-3-.01(2) states that Class One Receivers are required to register with ADEM.

10. On April 27, 2016, the Department issued a 2nd Failure to Register as a Class One Receiver Letter to the Facility located at 203 Highway 80 East, Selma, Dallas County, Alabama. This letter was received by the Facility on May 6, 2016. The facility was given fourteen days to respond and The Department noted no response was received. On May 24, 2016, the Facility was referred to the Compliance & Enforcement Section. ADEM Admin Code r. 335-4-3-.01(2) states that Class One Receivers are required to register with ADEM.

11. On June 7, 2016, the Department issued a Warning Letter for failing to register as a Class One Receiver to the Facility located at 203 Highway 80 East, Selma, Dallas County, Alabama. The Department noted no response was received. On August 8, 2016, a Failure to Respond Letter to the Warning Letter was issued to the Facility located at 203 Highway 80 East, Selma, Dallas County, Alabama. The Department noted this letter was returned unclaimed on

September 6, 2016. A Failure to Respond letter was also sent by FedEx and was not claimed. Furthermore, multiple attempts were made to reach the Facility by phone but were never successful. ADEM Admin Code r. 335-4-3-.01(2) states that Class One Receivers are required to register with ADEM.

12. On February 13, 2020, Department personnel conducted an inspection. The Facility continued to operate as a Class One Scrap Tire Receiver and was provided the ADEM Form 537 (Registration Application) during the inspection. Furthermore, it was determined that the Facility had failed to keep collections of the scrap tire fee current with the Alabama Department of Revenue in accordance with ADEM Admin. Code r. 335-3-4-1-.04(4) . The Facility did not provide the completed application as discussed during the inspection.

13. On February 19, 2020, the Department issued a Warning Letter for Failure to Register as a Class One Receiver to the Facility located at 203 Highway 80 East, Selma, Dallas County, Alabama. The facility was given thirty days to respond and The Department noted no response was received. ADEM Admin Code r. 335-4-3-.01(2) states that Class One Receivers are required to register with ADEM.

14. On April 22, 2020, the Department issued a Notice of Violation (hereinafter "NOV") to the Facility for the violation of failing to register. The facility was given thirty days to respond and The Department noted no response was received from the Facility. Furthermore, multiple attempts were made to reach the Facility by phone but were never successful. ADEM Admin Code r. 335-4-3-.01(2) states that Class One Receivers are required to register with ADEM.

15. 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 Facility; the economic benefit which delayed compliance may confer upon the Facility; the nature, extent and degree of success of the Facility's efforts to minimize or mitigate the effects of such violation upon the environment; the Facility's history of previous violations; and the ability of the Facility 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 Facility did not comply with provisions of ADEM Admin. Code div. 335-4 at the above site. The Department has no evidence of any irreparable harm to the environment.

B. **THE STANDARD OF CARE:** The Facility failed to operate in a manner commensurate with applicable scrap tire regulatory requirements at the above site.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if the Facility 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 Facility to mitigate any effects upon the environment.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Facility has a history of similar violations at this site.

F. **THE ABILITY TO PAY:** The Facility 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 \$5,500.00 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	\$100 - \$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 Facility shall pay to the Department a civil penalty in the amount of \$5,500.00 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 Facility'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 Facility shall comply with all applicable provisions of ADEM Admin. Code div. 335-4.

C. That, not later than **forty-five days** after the issuance of this Order, the Facility shall properly register as a Class One Receiver using ADEM Form 537.

D. ADEM Admin Code r. 335-4-1-.04(4) states that a tire dealer selling replacement tires shall collect the Scrap Tire Environmental Fee at a rate of one dollar (\$1.00) per tire. The Alabama Department of Revenue (ADOR) shall specify how the fee is to be submitted.

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

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

G. 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 _____, 2020.

Lance R. LeFleur

Director

Attachment A

Willie Smiley dba The Place
Selma, Dallas County

Unpermitted Scrap Tire Receiver

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to register as a scrap tire receiver	1	\$3,500	\$1,000	\$500	
Failure to keep scrap tire collections current with ADOR	1	\$250	\$250		
					Total of Three Factors
TOTAL PER FACTOR		\$3,750	\$1,250	\$500	\$5,500

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

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$5,500
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$5,500