

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )
David Moore dba The Fast Tire Company, L.L.C ) Order No. 21-XXX-ST
3506 Greensboro Ave. Reg. #SC10000-025160 )
Tuscaloosa, Tuscaloosa County, Alabama )

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and The Fast Tire Company, L.L.C. (hereinafter "Registrant" or "Fast Tire") 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.

STIPULATIONS

- 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. The Registrant is the operator of a registered Class One Scrap Tire Receiver facility located at 3506 Greensboro Avenue, Tuscaloosa (Receiver Reg. #SC10000-025160), which is the subject of this Consent 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.

### ***DEPARTMENT'S CONTENTIONS***

4. On October 27, 2004, the Department issued Class One Receiver Registration No. SC10000-025160 to the Registrant for a scrap tire facility located at 3506 Greensboro, Tuscaloosa, Tuscaloosa County, Alabama.

5. On November 15, 2017, 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(2) states 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. At the time of inspection, Department personnel documented that the Registrant had exposed scrap tires to the elements for more than thirty (30) days with no Vector Control Plan.

B. ADEM Admin. Code r. 335-4-5-.03 requires that a receiver shall submit a summary of the previous quarter's activities to ADEM utilizing ADEM Form 539. Department personnel documented that quarterly reports had not been submitted.

C. ADEM Admin. Code r. 335-4-5-.04 requires that the Registrant maintain an operating record at the facility or in an alternate location approved by ADEM, and that the operating record must contain copies of quarterly reports, registration authorization, manifests, etc. At the time of inspection, Department personnel documented that there were no documents on site available for inspection except some manifests.

D. ADEM Admin. Code r. 335-4-5-.01(1) requires that the Registrant not store tire materials in excess of the accumulation limit approved by ADEM. If the excess amount has not been eliminated within thirty (30) days of the date the accumulation limit was exceeded, the

receiver shall notify ADEM and shall begin to remove the tire materials from the facility to a permitted processor or Solid Waste Disposal Facility. During the inspection, Department personnel documented approximately 5,000 scrap tires at the facility, which exceeds the accumulation limit of 1,500 scrap tires.

6. On July 25, 2019, Department personnel conducted a follow-up 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(2) states 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. At the time of inspection, Department personnel documented that the Registrant had exposed scrap tires to the elements for more than thirty (30) days with no Vector Control Plan.

B. ADEM Admin. Code r. 335-4-5-.03 requires that a receiver shall submit a summary of the previous quarter's activities to ADEM utilizing ADEM Form 539. Department personnel documented that quarterly reports had not been submitted for twenty-nine (29) quarters.

C. ADEM Admin. Code r. 335-4-5-.04 requires that the Registrant maintain an operating record at the facility or in an alternate location approved by ADEM, and that the operating record must contain copies of quarterly reports, registration authorization, manifests, etc. At the time of inspection, Department personnel documented that there were no records on site available for review at the time of the inspection except for some manifests.

D. ADEM Admin Code r. 335-4-5-.01(1) requires that the Registrant not store tire materials in excess of the accumulation limit approved by ADEM. If the excess amount has not been eliminated within thirty (30) days of the date the accumulation limit was exceeded, the

receiver shall notify ADEM and shall begin to remove the tire materials from the facility to a permitted processor or SWDF. During the inspection, Department personnel documented approximately 4,000 scrap tires at the facility, which exceeds the accumulation limit of 1,500 scrap tires.

7. On August 30, 2019, the Department issued a Notice of Violation (hereinafter “NOV”) to the Registrant for the violations documented during the November 15, 2017, and July 25, 2019, inspections. To date there has not been a full, satisfactory response to the August 30, 2019, NOV.

8. On January 14, 2020, 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(2) states 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. At the time of inspection, Department personnel documented that the Registrant had exposed scrap tires to the elements for more than thirty (30) days with no Vector Control Plan.

B. ADEM Admin. Code r. 335-4-5-.04 requires that the Registrant maintain an operating record at the facility or in an alternate location approved by ADEM, and that the operating record must contain copies of quarterly reports, registration authorization, manifests, etc. At the time of inspection, Department personnel documented that the Registrant had failed to maintain copies of quarterly reports in the operating record.

C. ADEM Admin. Code r. 335-4-5-.01(1) requires that the Registrant not store tire materials in excess of the accumulation limit approved by ADEM. If the excess amount has not

been eliminated within thirty (30) days of the date the accumulation limit was exceeded, the receiver shall notify ADEM and shall begin to remove the tire materials from the facility to a permitted processor or SWDF. During the inspection, Department personnel documented the presence of approximately 4,000 scrap tires at the facility, which exceeds the accumulation limit of 1,500 scrap tires.

D. ADEM Admin. Code r. 335-4-5-.03 requires that a receiver shall submit a summary of the previous quarter's activities to ADEM utilizing ADEM Form 539. Departmental records document that the most recent quarterly report received by the Department from the facility was dated October 24, 2012.

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. 335-4 at the above site. 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 at the above site and failed to respond to notice 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 as evidenced by inspections prior to 2019.

F. THE ABILITY TO PAY: The Registrant has alleged and ADEM confirmed an inability to pay the full civil penalty. The overall penalty has been adjusted by \$2,900.

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

10. The Department neither admits nor denies the Registrant'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 in this Consent Order are in the best interests of the citizens of Alabama.

***REGISTRANT'S CONTENTIONS***

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

***ORDER***

THEREFORE, without admitting that it has violated any statutes or regulations, the Registrant, along with the Department, desires to resolve and settle the alleged violations 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), as amended, as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Registrant agree to enter into this Consent Order with the following terms and conditions:

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 \$7,000.00 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 Registration No. SC10000-025160.

C. That, not later than **forty-five days** after the issuance of this Order, the Registrant shall remove all scrap tires in excess of the accumulation limit (1500) from the site and provide proper documentation to the Department showing final outcome (disposal, recycled, etc.). Used tires that remain at the site shall be racked or stacked in accordance with the requirements for used tires found at ADEM Admin. Code rs. 335-4-1-.01(eee) (1-3).

D. That, not later than forty five days after the issuance of this Order, the Registrant shall develop a Vector Control Plan in accordance with ADEM Admin. Code r. 335-4-5-.01(2) and provide a copy to the Department.

E. That, not later than forty-five days after the issuance of this Order, the Registrant shall develop a plan to do timely quarterly reporting to the Department and provide a copy to the Department.

F. That, not later than forty-five days after the issuance of this Order, the Registrant shall develop a plan to maintain an operating record at the facility or in an alternate location approved by ADEM, and that the operating record must contain copies of quarterly reports, registration authorization, manifests, etc.

G. 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.



H. The parties agree that, subject to the terms of these provisions 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.

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

J. For purposes of this Consent Order only, the Registrant 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.

K. The parties 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 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; the Registrant 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.

L. The parties 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 Registrant does hereby waive any hearing on the terms and conditions of this Consent Order.

M. The parties agree that this Consent Order shall not affect the Registrant's obligation to comply with any Federal, State, or local laws or regulations.

N. The parties agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

O. The parties agree that, should any provision of this Consent 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.

P. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

Q. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Registrant of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

David Moore dba  
The Fast Tire Company, L.L.C.

David Moore  
(Signature of Authorized Representative)

DAVID MOORE  
(Printed Name)

Owner  
(Printed Title)

12-8-10  
(Date Signed)

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
Lance R. LeFleur  
Director

\_\_\_\_\_  
(Date Signed)

Attachment A

David Moore dba The Fast Tire Company, L.L.C.  
Tuscaloosa, Tuscaloosa County

Facility ID No. SC10000-025160

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Tires exposed longer than 30 days	2	\$3,000	\$500	\$350	
No Vector Control Plan	2	\$750	\$250	\$100	
Exceedance of Storage Limit	2	\$2,000	\$1,000	\$500	
Failure to Submit Quarterly Reports	2	\$1,000	\$350	\$100	
Failure to Maintain Operating Record	2	\$1,000	\$250	\$100	
Failure to Maintain Copies of Manifests in the Operating Record	1	\$200	\$100	\$100	
					<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<b>\$7,950</b>	<b>\$2,450</b>	<b>\$1,250</b>	<b>\$11,650</b>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$2,900
Other Factors (+/-)	\$1,750

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$11,650
Total Adjustments (+/-)	\$4,650
<b>FINAL PENALTY</b>	<b>\$7,000</b>