

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)	
)	Order No. 18 -XXX -ST
Willie J. McPherson)	
Harmony Street Scrap Tire Site)	
Montgomery, Montgomery County, Alabama)	

FINDINGS

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 Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) Administrative Code of Regulations (hereinafter “ADEM Admin. Code R.”) promulgated pursuant thereto, the Department makes the following FINDINGS:

1. Willie J. McPherson (hereinafter “Mr. McPherson”), who owns property located on Harmony Street (specifically, parcel number 1108282008002000) in Montgomery, Montgomery County, Alabama, is responsible for a scrap tire site (hereinafter “STS”) on the aforementioned property, 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 §22-40A-11, as amended, the Department is the state agency authorized to administer and enforce the provisions of the Alabama Scrap Tire Environmental Quality Act.
4. On June 1, 2017, a representative of the Department’s Removals and Response Unit conducted an inspection of property located on Harmony Street (parcel number 1108282008002000) in Montgomery, Montgomery County, Alabama. A review of Montgomery County property records revealed that Mr. McPherson was the owner of

the Harmony Street STS. The inspection and a review of Mr. McPherson's compliance with certain requirements of Division 4 of the ADEM Admin. Code revealed the following:

Pursuant to ADEM Admin. Code r. 335-4-4-.01(1), no person may accumulate more than 100 scrap tires, except a permitted processor, a person who registers as required in ADEM Admin. Code r. 335-4-3-.01(2), or a permitted SWDF [Solid Waste Disposal Facility]. No person may expose scrap tires to the elements for more than thirty (30) days.

As noted during the inspection, Mr. McPherson had accumulated approximately 400 scrap tires on the aforementioned property without having obtained a valid scrap tire processor's permit, a Class One Receiver's certificate of registration or a SWDF permit. Moreover, Mr. McPherson appeared to have exposed accumulated scrap tires to the elements for more than thirty days. The amassing or gathering scrap tires on the aforementioned property without the proper authorization from the Department constituted the creation of an illegal STS.

5. On July 27, 2017, the Department issued to Mr. McPherson a Notice of Violation (hereinafter "NOV") requiring abatement and closure of the STS and the submittal of associated documentation.

6. On August 28, 2017, an informal meeting was held between Mr. McPherson and Removals and Response Unit personnel at the ADEM Montgomery offices. The parties agreed upon a ninety-day timetable for the remediation of the STS.

7. On January 31, 2018, a representative of the Department's Removals and Response Unit conducted a follow-up inspection of the STS to determine its current status. The inspection documented the continued existence of the STS.

8. On February 6, 2018, the Department issued to Mr. McPherson a Failure to Comply letter for failure to remediate the STS, as required by the July 27, 2017, NOV and as agreed to during the August 28, 2017 meeting.

9. Mr. McPherson failed to respond to the February 6, 2018, Failure to Comply letter.

10. 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 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Mr. McPherson did not comply with the requirements applicable to scrap tire disposal and management. The Department is unaware of any irreparable harm to the environment. The STS may pose a threat to human health or safety of the public due to the possible presence of disease vectors.

B. THE STANDARD OF CARE: Mr. McPherson failed to abide by the applicable scrap tire requirements and failed to implement proposed corrective measures to abate the STS.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Mr. McPherson 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 attempts

by Mr. McPherson to mitigate potential effects upon the environment that may have been caused as a result of the STS.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Mr. McPherson does not have a documented history of violations of the applicable requirements of Division 335-4 of the ADEM Admin. Code.

F. THE ABILITY TO PAY: The Department does not have any evidence indicating that Mr. McPherson is unable 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 is appropriate for the violation cited herein. In addition to the penalties assessed under Ala. Code §22-22A-5(18)c., as amended, a fine of five dollars (\$5) per tire is assessed against Mr. McPherson for engaging in the unauthorized accumulation and disposal of scrap tires as required under Ala. Code §22-40A-19(e). The total assessed penalty for the violation cited herein is \$7,000 (see Attachment A, which has been made part of the Department's FINDINGS).

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code, §§22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-11, 22-40A-4(a), 22-40A-4(b), and 22-40A-5(a), as amended, it is hereby ORDERED:

A. That, not later than forty-five days of receipt of this Order, Mr. McPherson shall pay to the Department a civil penalty in the amount of \$7,000 for the violations cited herein. The penalty shall be made payable to the Alabama Department

of Environmental Management by certified or cashier's check or any other method of payment acceptable to the Department 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 include Mr. McPherson's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the receipt of this Order and continuing each and every day thereafter, Mr. McPherson shall cease and desist from operating a STS.

C. That, within thirty days of receipt of this Order, Mr. McPherson shall submit a remediation plan to the Department in accordance with the applicable requirements of ADEM Admin. Code rs. 335-4-2-.01(5) and 335-4-2-.01(6). This plan shall include a schedule for remediation and closure completion. Mr. McPherson shall implement the remediation plan as approved by the Department and remove all scrap tires onsite to an approved landfill unit.

D. That, within thirty days of completion of remediation activities, Mr. McPherson shall document remediation activities by submitting the following information to the Department:

1. Time period in which the remediation activities occurred.
2. Total volume of tires and solid waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site taken before and after remediation.

6. Documentation that adequate sedimentation controls were employed to prevent erosion from disturbed areas resulting from the remediation activities.

7. Documentation that the site has been secured to prevent any future illegal dumping.

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.

F. That, the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Mr. McPherson for the violation cited herein.

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

ORDERED and ISSUED this _____ day of _____, 2018.

Lance R. LeFleur
Director

Attachment A

Mr. Willie J. McPherson
 Harmony Street Scrap Tire Site
 Montgomery, Montgomery County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Creation of an illegal scrap tire site	1	\$4,000	\$1,000	\$0	
Additive fee- \$5 per tire x 400 tires		\$2,000			
TOTAL PER FACTOR		\$6,000	\$1,000	\$0	\$7,000

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

Economic Benefit (+)*	\$0
Amount of Initial Penalty	\$7,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$7,000

Footnotes

* See the "FINDINGS" portion of the Order for a detailed description of each violation and the penalty factors.

