

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
Curley Dixon dba Curley's Tire and Auto	)	
or CJ Tires and Repair	)	Order NO. 23-XXX-ST
4315 Mobile Highway	)	
Montgomery, Montgomery County, Alabama	)	
Scrap Tire Registration No. SC10000-026764	)	

**FINDING 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. Curley Dixon dba Curley's Tire and Auto or CJ Tires and Repair (hereinafter "the Facility") is the operator of a registered Class One Scrap Tire Receiver, located at 4315 Mobile Highway, Montgomery, Montgomery County, Alabama which is the subject of this administrative order.

A. The facility was issued a Class One Scrap Tire Receiver registration, SC10000-026764, on March 11, 2005.

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, 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 December 29, 2021, Department personnel conducted a compliance inspection of the Facility to determine compliance with ADEM Scrap Tire Regulations found in Division 335-4 of the ADEM Admin. Code. During the inspection the following violations were noted:

A. ADEM Admin. Code r. 335-4-4-.01(2) limits the accumulation of scrap tires by Class One Receivers to no more than 1,500 scrap tires. Approximately 8,281 Scrap Tires were observed in exceedance of the approved storage limit for Class One Receivers.

B. ADEM Admin. Code r. 335-4-4-.02(2), requires the amount of tire materials that may be stored outdoors not to exceed the number of scrap tires or weight of processed tire material that can be processed or utilized in a thirty-day period. The facility shall process or utilize tire materials on a first-in, first-used basis. Scrap tires were observed around the facility to have been exposed to elements for over one year.

C. ADEM Admin. Code r. 335-4-5-.01(2) requires scrap tire receivers to prevent exposure of scrap tires to the elements for greater than thirty (30) days. If scrap tires are exposed to the elements for more than seven (7) days, a Vector Control Plan shall be developed and implemented. Scrap tires were observed in front and behind the facility that had been exposed to the elements for greater than thirty days with no Vector Control Plan in place.

D. ADEM Admin. Code r 335-4-4-.02(a) requires that tire materials shall not be stored in the 100-year flood plain, in coastal beaches or dunes, or within 200 feet of a wetland or waters of the state. Scrap tires were observed on the back of the property and in the wooded area within 200 feet of the Genetta Ditch which runs almost immediately into Catoma Creek.

E. ADEM Admin Code r. 335-4-4-.02(2)(b)1. requires that the width of any scrap tire pile shall not exceed fifty (50) feet. The scrap tire pile behind the shop had one section that was approximately seventy-two feet wide.

F. ADEM Admin. Code r. 335-4-5-.03 requires receivers to submit a scrap tire quarterly report, utilizing ADEM Form 539, for each quarter of the calendar year. All reports shall be submitted to ADEM by the twenty eighth day following the end of each reporting period. No reports have been submitted/received from the Facility since October 28, 2020.

5. On January 28, 2022, the Department issued a Notice of Violation (hereinafter "NOV") to the Facility for the violations documented during the December 29, 2021 inspection.

6. On March 31, 2022, the Department sent a letter for Failure to Respond to Notice of Violation. No response to this letter was received.

7. On October 6, 2022, Department personnel conducted a follow up inspection of the Facility to determine compliance with ADEM Scrap Tire Regulations found in Division 335-4 of the ADEM Admin. Code. During the inspection the aforementioned violations remained in non-compliance, including one additional violation shown below:

A. ADEM Admin. Code r. 335-4-5-.04(a) requires receivers to maintain an operating record at the facility or in an alternate location approved by ADEM. Operating records, including manifests, were not available for review during the inspection. Also, ADEM Admin. Code r. 335-4-5-.04(a)(4)(iv) requires the Vector Control Plan, information regarding the chemicals used to spray the tires, and a legible log of the dates that preventative treatments were applied to scrap tires exposed to the elements be kept in the Operating Record. This information was not available during the inspection.

8. On May 8, 2023, Department personnel conducted a follow up inspection of the Facility to determine compliance with ADEM Scrap Tire Regulations found in Division 335-4 of the ADEM Admin. Code. The aforementioned violations remain in non-compliance.

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 Facility; the economic benefit which delayed compliance may confer upon the Facility; the nature, extent, and degree of the 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. 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 Facility 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 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 no history of similar violations at this site.

F. THE ABILITY TO PAY: The Department is unaware of any 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 Section A of the Order 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 Curley Dixon dba Curley's Tire and Auto or CJ Tires and Repair shall cease from accumulating any scrap tire materials in excess of established accumulation limits.

B. That, not later than **forty-five days** after the issuance of this Order, the Facility shall pay to the Department a civil penalty in the amount of \$15,400 for the violations cited herein. Said penalty shall be 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.

C. That, within **thirty days** of the issuance of this Order, the Facility shall submit to the Department, for approval, a corrective action plan including a proposed timeline for these activities, which address the violations noted above in accordance with ADEM Admin. div. 335-4 regulations. Specifically, the corrective action plan shall include:

1. Steps (including preventative maintenance measures) that have been or will be taken to ensure the noted violations do not recur; and

2. A schedule for implementation of proposed actions to address the deficiencies outlined in this Order including the following:

a. Remove tire materials in excess of the accumulation limit approved by ADEM as required by ADEM Admin. Code r. 335-4-5-.01(1).

b. Prepare and implement a Vector Control Plan for tire materials exposed to the elements for greater than seven days as required by ADEM Admin. Code r. 335-4-5-.01(2).

c. Store tire materials in a manner that minimizes vector breeding and that is consistent with National Fire Protection Association guidelines as required by ADEM Admin. Code r. 335-4-1-.01(eee).

d. Utilize ADEM approved manifest for the movement, shipment and transportation of scrap tires as required by ADEM Admin. Code r. 335-4-4-.05.

e. Submit scrap tire quarterly reports utilizing ADEM Form 539, electronically as required by ADEM Admin. Code r. 335-4-5-.03.

f. Maintain an operating record at the Facility or in an alternate location approved by ADEM as required by ADEM Admin. Code r. 335-4-5-.04.

D. 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.

E. 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.

F. That should any provision of this Order be declared by a court of competent jurisdiction of 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 \_\_\_\_\_, 2023.

\_\_\_\_\_

Lance R. LeFleur

Director

Attachment A

Curley Dixon DBA Curley's Tire and Auto or CJ Tires and Repair  
 Montgomery, Montgomery County  
 Registration Number: SC10000-026764

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Tires exposed longer than 30 days	1	\$3,750	\$2,000	\$0	
Exceedance of storage limit	1	\$1,500	\$750	\$0	
Failure to maintain operating records	2	\$200	\$200	\$0	
Failure to develop and implement a Vector Control Plan	1	\$1,000	\$500	\$0	
Failure to submit Quarterly Reports	10	\$2,500	\$750	\$0	
Tires stored within 200 feet of wetland or waters of the state	1	\$1,000	\$500	\$0	
Exceedance of scrap tire pile width	1	\$500	\$250	\$0	
<b>TOTAL PER FACTOR</b>		<b>\$10,450</b>	<b>\$4,950</b>	<b>\$0</b>	<b>\$15,400</b>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	

Economic Benefit (+)	
Amount of Initial Penalty	\$15,400
Total Adjustments (+/-)	\$0