

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

July 28, 2014

CERTIFIED MAIL # 91 7199 9991 7030 3171 8578
RETURN RECEIPT REQUESTED

Mr. Ricky Hindman
Hindman Wrecker Service and Salvage, LLC
221 Costner Street
Talladega, Alabama 35160

Dear Mr. Hindman:

Subject: **Consent Order No. 14-084-CST**
Hindman Wrecker Service and Salvage, LLC

Please find enclosed ADEM Consent Order. 14-084-CST which requires Hindman Wrecker Service and Salvage, LLC to take certain actions in regard to alleged violations of the Alabama Scrap Tire Environmental Quality Act. This Order underwent a 30 public notice and no comments were received by the Department. Please note that the assessed civil penalty is due within 45 days of the effective date of the Order.

If you have any questions regarding this matter, please contact Hunter Mathews of the Enforcement and Remediation Section at (334) 274-4233 or by email at hmathews@adem.state.al.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip D. Davis", written over a horizontal line.

Phillip D. Davis, Chief
Land Division

Enclosure
PDD/hwm

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

| | | |
|--|---|----------------------|
| IN THE MATTER OF: |) | |
| |) | Order No. 14-084-CST |
| |) | |
| Hindman Wrecker Service and Salvage, LLC |) | |
| Class Two Receiver Reg. #S0000005944 |) | |
| 221 Costner Street |) | |
| Talladega, Talladega County, Alabama 35160 |) | |
| |) | |

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Hindman Wrecker Service and Salvage, LLC (hereinafter "the Registrant") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.), and 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

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and 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 Department makes the following findings of fact:

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
2. Hindman Wrecker Service and Salvage, LLC (hereinafter "the Registrant") is a registered Class Two Scrap Tire Receiver facility located at 221 Costner Street in Talladega, Talladega County, Alabama, which is the subject of this administrative order.
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 Ala. Code §§ 22-40A-1 to 22-40A-24, as amended.

4. On August 3, 2006, the Department issued a Class Two Receiver Registration No. S0000005944 to the Registrant for a scrap tire facility located at 221 Costner Street, Talladega, Talladega County, Alabama.

CONTENTIONS

3. On November 11, 2013, 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.

4. ADEM Admin Code r. 335-4-5-.01(2) states that no receiver may expose scrap tires to the elements for more than thirty days. Department personnel documented that the Registrant had exposed scrap tires to the elements for more than thirty days.

5. ADEM Admin. Code r. 335-4-5-.01(2) requires that the Registrant develop and implement a vector control plan if tires are exposed to the elements for more than seven days. Department personnel documented that a vector control plan had not been developed and implemented.

6. 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. Section E. of Registration No. S0000005944 limits the accumulation of scrap tires at this facility to no more than 300. Department personnel documented the presence of approximately 6,700 scrap tires at the facility.

7. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), 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. 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.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if the Registrant has realized an 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 has a history of similar violations.

F. THE ABILITY TO PAY: The Registrant has not alleged an inability to pay the civil penalty of \$4,100.00.

G. It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised 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.

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 (2006 Rplc. Vol.)), 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 Order with the following terms and conditions:

A. Pursuant to Ala. Code § 22-22A-5(18 (2006 Rplc. Vol.)), the Registrant agrees to pay the Department a civil penalty in the amount of \$4,100.00 to be paid in full within 45 days from the effective date of this Consent Order.

B. Payment of the 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

Any check submitted to the Department pursuant to this Consent Order shall reference the Registrant's name and address and the ADEM Consent Order number of this action.

C. That immediately upon the issuance of this Consent Order and continuing each and every day thereafter, the Registrant shall comply with all applicable provisions of ADEM Admin. Code r. 335-4.

D. That, within thirty calendar of the effective date of this Consent Order, the Registrant shall submit documentation to the Department outlining the measures that have been or will be employed to ensure compliance with ADEM Division 4 regulations.

E. 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.

F. The parties agree that, subject to the terms of the 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.

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

H. 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. The Registrant also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Registrant shall be limited to the defenses of *Force Majeure*, compliance with this Agreement, and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Registrant, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Registrant) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, or normal precipitation events shall not constitute Force Majeure.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

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

O. 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.

Hindman Wrecker Service and Salvage, LLC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Amanda Hindman
(Signature)

Amanda Hindman
(Printed Name)

4/30/14
(Date Signed)

Lance R. LeFleur
Lance R. LeFleur
Director

7/28/14
(Date Signed)

Attachment A

Penalty Synopsis

Hindman's Wrecker Service and Salvage

(Scrap Tire Registration No. S0000005944)

| Violation* | Number of Violations* | Seriousness of Violation & Base Penalty* | Standard of Care* | History of Previous Violations* |
|--|-----------------------|--|-------------------|---------------------------------|
| Tires exposed longer than 30 days | 1 | 1,000 | 500 | 500 |
| Failure to develop and implement a vector control plan | 1 | 250 | 100 | 250 |
| Exceedance of storage limitation | 1 | 500 | 500 | 500 |
| Additive penalty per statute (\$5/tire) | | | | |
| Totals: | - | 1,750.00 | 1,100.00 | 1,250.00 |
| Economic Benefit: | - | | | |
| Mitigating Factors: | - | | | |
| Ability to Pay: | - | | | |
| Other Factors: | - | | | |
| Civil Penalty: | | | | 4,100.00 |

Footnotes

* See the "Findings" of the order.