

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

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June 24, 2016

CERTIFIED MAIL NO.: 91 7108 2133 3936 7225 6206

Mr. Gordon Linkous
Manufacturing Director
Goodyear Tire & Rubber Company
922 East Meighan Ave
Gadsden, AL 35093

**RE: CONSENT ORDER NO. 16-073-CAP
Goodyear Tire & Rubber Co.
Gadsden, AL
Facility No. 307-0006**

Dear Mr. Linkous:

Enclosed with this letter is ADEM Consent Order No. 16-073-CAP which requires Goodyear Tire & Rubber Company to take certain actions in regard to alleged violations of the Alabama Air Pollution Control Act. This Order has been issued with the consent of Goodyear Tire & Rubber Company and the Department. Please refer to Order Item A., which requires that monetary penalties be paid within 45 days of the date of this Order.

If you have any questions concerning this matter, please contact Trevor Baird at (334) 270-5600 in Montgomery.

Sincerely,

A handwritten signature in blue ink, appearing to be "RWG", is written over a faint, larger signature.

Ronald W. Gore, Chief
Air Division

RWG/TOB

Enclosure

cc: Thomas L. Johnston, Office of General Counsel

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
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Goodyear Tire & Rubber Company)
Gadsden, Etowah County, Alabama)

Air Facility ID No. 307-0006)

CONSENT ORDER NO. 16-073-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and Goodyear Tire & Rubber Company (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a tire production facility (hereinafter, the “Facility”) in Gadsden, Etowah County, Alabama (ADEM Air Facility ID No. 307-0006).

2. 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.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to

administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The Permittee now operates the Facility under the authority of Major Source Operating Permit No. 307-0006 (hereinafter, the “MSOP”) issued to it on January 17, 2012 by the Department.

5. Proviso No. 1 of “Emission Standards” under the Tire Building and Curing Section of the MSOP states: “The VOC content of any sprays used by the Green Tire Sprayers shall not exceed 1.0% by weight.”

6. Proviso No. 6 for the Tire Building and Curing under the “Applicability” Section of the MSOP states: “The green tire sprayers are subject to the applicable provisions of 40 CFR 60 Subpart BBB, ‘*Standards of Performance for the Rubber Tire Manufacturing Industry*’”. This requires that the Department be notified of spray formulation change within thirty (30) days pursuant to 40 CFR §60.546(j).

7. Proviso No. 12 for the General Permit Provisos of the MSOP states:

A compliance certification covering the reporting period between January 1st and December 31st of each calendar year shall be submitted to the Department no later than March 1st of each calendar year. (a) The compliance certification shall include the following: (1) The identification of each term or condition of this permit that is the basis of the certification; (2) The compliance status; (3) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with Rule 335-3-16-.05(c) (Monitoring and Recordkeeping Requirements); (4) Whether compliance has been continuous or intermittent; (5) Such other facts as the Department may require to determine the compliance status of the source.

DEPARTMENT’S CONTENTIONS

8. On January 20, 2016, the Department received from the Permittee an annual report for the 2015 reporting period stating that the Volatile Organic Compound (VOC) content for the Green Tire Spray was 1.7% by weight. Upon further investigation the Department discovered that a similar report was received from the Permittee on January 29, 2015 for the 2014 reporting period. The VOC content reflected in both reports exceeded the permitted 1.0% VOC content by weight, in violation of Proviso 1 of the "Emission Standards" for the Tire Building and Curing Section of the MSOP. Furthermore, the Permittee certified compliance with all Provisos of the MSOP in the 2014 Annual Compliance Certification and failed to notify the Department of the change in formulation of the Green Tire Spray as required by 40 CFR §60.546(j).

9. On February 4, 2016, the Department issued the Permittee a Notice of Violation (NOV) regarding the violations discovered during the review of the January 20, 2016 report. The NOV required the Permittee to further explain of the circumstances surrounding the VOC content exceedance of permitted levels.

10. On February 25, 2016, the Department received the Permittee's response to the February 4, 2016, NOV and it stated that it had not informed the Department of the spray formulation change due to "an internal communication gap which allowed the use of the higher VOC content green tire spray in question." The Permittee further explained that continuous compliance with Proviso 1 of "Emission Standards" for the Tire Building and Curing Section of the MSOP was certified because it was "...following standards pursuant to 40 CFR 60 Subpart BBB for green tire spray with a VOC content >1.0% by weight. The facility was in continuous compliance with the federal standards, but missed

the fact that the permit had a state issued site specific limit that was more stringent than the federal limit.”

11. 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 \$25,000.00 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 Department considers the following actions by the Permittee be serious violations:

- (1) Erroneously certifying continuous compliance with the MSOP;
- (2) Failure to notify the Department of the formulation change, and;
- (3) Utilizing a Green Tire Spray with a VOC content that exceeded permitted levels.

However, the Department is not aware of any irreparable harm to the environment resulting from these violations.

B. THE STANDARD OF CARE: The Permittee failed to exhibit a sufficient standard of care by failing to notify the Department that the spray formulation had changed, failing to acknowledge that the new spray was above permitted levels of VOC content, and failing to note non-compliance in the Annual Compliance Certification.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any evidence indicating that the Permittee received any significant economic benefit from these violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is aware that a change was made to Goodyear's production process once aware of the violation.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee does not have a history of similar violations with the Department.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: 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 in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

12. 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, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate (*See* "Attachment A", which is made a part of Department's Contentions).

13. The Department neither admits nor denies Permittee'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 contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

14. Upon notification of the violations, Goodyear conducted a root cause analysis and worked closely with the materials supplier to prepare and implement trials of new raw materials which led to the successful conversion to an acceptable Green Tire Spray. Permittee neither admits nor denies the Department's contentions. Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues 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)c., *as amended*, as well as the need for timely and effective enforcement, and the Department has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$8,000.00 in settlement of the violations alleged herein within forty-five days

from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified 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

C. The Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3 and the MSOP immediately upon the effective date of this Order and continuing every day thereafter.

D. 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.

E. The parties agree that, subject to the terms of these presents 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.

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

G. For purposes of this Consent Order only, the Permittee 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 Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee 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 Permittee, including its contractors and consultants, 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 Permittee) 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, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee 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 concerning the Facility 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, and the Permittee 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.

I. The Department and the Permittee 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 Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this 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.

L. The Department and the Permittee agree 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.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this 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 Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

GOODYEAR TIRE & RUBBER CO.


(Signature of Authorized Representative)

Gordon Linkous

(Printed Name)

Manufacturing Director

(Printed Title)

5-18-16

(Date)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


Lance R. LeFleur
Director

6/24/16
(Date Executed)

Attachment A

**Goodyear Tire and Rubber Company
Etowah County**

Facility ID No. 307-0006

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Failure to accurately Certify Compliance	1	\$2,000	\$2,000	--	\$4,000.00
Failure to adhere to VOC emission standard	1	\$2,000	\$2,000		\$4,000.00
Failure to notify the Department of change in operation	1	\$1,000	\$1,000		\$2,000.00
<i>TOTAL PER FACTOR</i>		<i>\$5,000.00</i>	<i>\$5,000.00</i>	<i>--</i>	<i>\$10,000.00</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	(\$2,000)
Total Adjustments (+/-)	(\$2,000)

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$10,000.00
Total Adjustments (+/-)	(\$2,000)
FINAL PENALTY	\$8,000.00

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.