FLORIDA DEPARTMENT OF Environmental Protection

CENTRAL DISTRICT OFFICE
3319 MAGUIRE BLVD., SUITE 232
ORLANDO, FLORIDA 32803

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

February 25, 2021

Clifton McFadden Jr., MGRM
Empire Tire of Edgewater, LLC
550 Mission Rd.
Orlando, FL 32808
empiretire@hotmail.com

Re: Empire Tire Inc
SW Facility ID # 95062
OGC Case #21-0108

Dear Mr. McFadden:

Enclosed is the executed Consent Order to resolve the above referenced case. This copy is for your records.

Should you have any questions or comments, please contact Amada Fernandez at 407-897-4159 or via e-mail at Amada.M.Fernandez@FloridaDEP.gov.

Your cooperation in this matter will be appreciated.

Sincerely,

On behalf of:

Aaron Watkins
Director, Central District

Enclosure

cc: Lea Crandall, OGC
Zoey Carr, Central District
Daun Festa, Central District
Amada Fernandez, Central District
Jill Farris, Central District

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February 19, 2021

Empire Tire of Edgewater, LLC
Clifton McFadden, Managing Member
6053 Edgewater Drive
Orlando, FL 32810
empiretire@hotmail.com

SUBJECT: Department of Environmental Protection v. Empire Tire of Edgewater, LLC
OGC File No.: 21-0108
WACS ID No. 95062
550 Mission Rd.
Orlando, FL 32808

Mr. McFadden:

The State of Florida Department of Environmental Protection ("Department") finds that Empire Tire of Edgewater, LLC ("Respondent"):

1. Failed to conduct an annual fire safety survey during 2020 in violation of 62-711.540(1)(d), F.A.C.
2. Failed to submit the required quarterly waste tire reports during 2020 in violation of 62-711.540(1)(d), F.A.C.
3. Failed to maintain a 50-feet wide fire lane around the perimeter of all outdoor waste tire piles in violation of 62-711.540(3)(c), F.A.C.
4. Failed to maintain fire lanes without obstructions in violation of 62-711.540(3)(c), F.A.C.

Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violations. These actions have since been completed. However, due to the nature of the violations, the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department's Offer

Based on the violations described above, the Department is seeking $ 2,750.00 in civil penalties and $ 250.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of $ 3,000.00. The civil penalties are apportioned as follows: $ 1,000.00 for violation of Rule 62-711.540(1)(d), F.A.C.; $ 750.00 for violation of Rule 62-711.540(1)(d), F.A.C.; and $ 1,000.00 for violation of Rule 62-711.540(3)(c), F.A.C.

Respondent's Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return it to the Department at Central District 3319 Maguire Blvd. Suit 232 Orlando, Florida 32803 by March 1, 2021. The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you, Clifton McFadden:

(1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
(2) acknowledge and waive Respondent's right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this offer, once final;
(3) acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, F.S.; and
(4) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violations referenced above.

Respondent's Performance

After signing and returning this document to the Department,

(1) Respondent must pay $ 3,000.00 in full by April 1, 2021.

(2) Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: http://www.fldepportal.com/go/pay/

It will take a number of days after this order is final, effective and filed with the Clerk of the Department before ability to make online payment is available.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, F.S. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected.

Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.
Please be aware that if the Respondent declines to respond to the Department's offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Amada Fernandez at (407) 897-4159 or at Amada.M.Fernandez@FloridaDEP.gov .

Sincerely,

On behalf of:

Aaron Watkins
District Director
Central District

FOR THE RESPONDENT:

I, CLIFTON J. MCFADDEN JR. [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____ Date: 2/22/2021
[Signature]

Title: MGRM
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 25th day of February, 2021, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

_____ on behalf of
Aaron Watkins
District Director
Central District

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

_____ February 25, 2021
Clerk Date
Attachments: Notice of Rights

Final clerked copy furnished to:
Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

NOTICE OF RIGHTS

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of the following information:

a) The OGC Number assigned to this Order;

b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;

c) An explanation of how the petitioner's substantial interests will be affected by the Order;

d) A statement of when and how the petitioner received notice of the Order;

e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;

f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;

g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Order; and

h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at the address indicated above. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.