

LANCE R. LEFLEUR
DIRECTOR



BOB RILEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

December 1, 2010

CERTIFIED MAIL NO. 91 7108 2133 3936 5737 7551
RETURN RECEIPT REQUESTED

GMAC Mortgage, L.L.C
C/O CSC Lawyers Incorporating Service, Inc.
150 South Perry Street
Montgomery, Alabama 36104

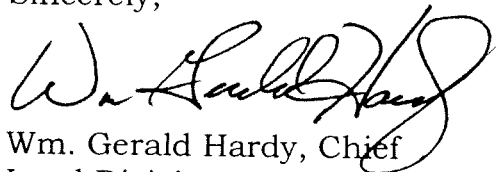
Dear Property Owner:

RE: Order No. 11-029-ST

Please find enclosed ADEM Order No. 11-029-ST which requires you to take certain actions in regard to alleged violations of the Alabama Scrap Tire Environmental Quality Act. This Order underwent a 30 day public notice and no comments were received by the Department. Please note that the assessed civil penalty is due within 45 days, and an abatement plan is due within 30 days of the issuance date of the Order.

If you have any questions concerning this matter, please contact David Hamilton at (334) 274-4249 in Montgomery.

Sincerely,



Wm. Gerald Hardy, Chief
Land Division



Enclosure

WGH/dh

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:)	
)	
)	Order No. 11 -029 –ST
GMAC Mortgage, L.L.C.)	
1853 Ishkooda Road)	
Jefferson County)	
Birmingham, Alabama)	

FINDINGS OF FACTS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.), the Alabama Scrap Tire Environmental Quality Act Ala. Code §§ 22-40A-1 to 22-40A-24(2006 Rplc. Vol. and 2009 Cum. Supp.), and the ADEM Administrative Code promulgated there under, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following finding of facts:

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. GMAC Mortgage, L.L.C. is the responsible party for an unauthorized scrap tire accumulation located at 1853 Ishkooda Road in Birmingham, Jefferson County, Alabama, which is the subject of this administrative order.
3. Pursuant to Ala. Code § 22-40A-11 (2006 Rplc. Vol. and 2009 Cum. Supp.), 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 (2006 Rplc. Vol. and 2009 Cum. Supp.).

4. Ala. Code §22-40A-4(a) (2006 Rplc. Vol. and 2009 Cum. Supp.) states that “No person may accumulate more than 100 scrap tires, except as a permitted processor, registered receiver, or permitted landfill.”

5. Ala. Code §22-40A-4(b) (2006 Rplc. Vol. and 2009 Cum. Supp.) states that “No person may expose accumulated scrap tires to the elements for more than 30 days.”

6. Ala. Code §22-40A-5(a) (2006 Rplc. Vol. and 2009 Cum. Supp.) states that “accumulations of scrap tires for whatever purpose ... shall be removed by the person responsible for the creation or the maintenance of the accumulation, or if the person responsible is not determined, by the landowner if the landowner does not qualify as an innocent landowner...”

7. ADEM Admin. Code r. 335-4-4-.01 (1) states that “No person may accumulate more than 100 scrap tires, except a permitted processor, a person who registers as required in 335-4-3-.01(2), or a permitted Solid Wasted Disposal Facility (hereinafter SWDF). No person may expose scrap tires to the elements for more than thirty days”

8. On January 20, 2010, Department personnel conducted an inspection and documented the existence of an unauthorized scrap tire accumulation, located on the property of GMAC Mortgage, L.L.C. (hereinafter “GMAC”) at 1853 Ishkooda Road, Birmingham, Jefferson County, Alabama. Property ownership was determined by a review of Jefferson County records. The waste consisted of more than 100 scrap tires.

9. On February 1, 2010, the Department issued a Notice of Deficiency (hereinafter “NOD”) to GMAC for an unauthorized scrap tire accumulation.

10. On March 29, 2010, the Department received a response from GMAC to the February 1, 2010, NOD which requested proof of property ownership.

11. On April 6, 2010, the Department issued a letter to GMAC with a copy of the Jefferson County Tax records which demonstrated that GMAC was the property owner.

12. The Department did not receive a response to the April 6, 2010 letter.

13. On June 1, 2010, the Department issued a Notice of Violation (hereinafter "NOV") to GMAC for failure to abate and close the unauthorized scrap tire accumulation.

14. The Department did not receive a response to the June 1, 2010 NOV.

15. 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 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 be less than \$100.00 or 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 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: GMAC did not comply with the requirements applicable to the proper management of scrap tires or solid waste disposal. The Department is unaware of any irreparable harm to the environment as a result of these violations. This unauthorized accumulation of scrap tires may pose a threat to human health due to the possible presence of disease vectors.

B. THE STANDARD OF CARE: GMAC failed to demonstrate a standard of care commensurate with applicable scrap tire management requirements and failed to abide by applicable solid waste disposal requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if GMAC 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 by GMAC to mitigate potential effects upon the environment and human health that may have been created as a result of the unauthorized accumulation of scrap tires/unauthorized solid waste dump.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of previous violations of scrap tire or solid waste laws and regulations by GMAC.

F. THE ABILITY TO PAY: GMAC has not alleged an 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 (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil

penalty in the amount of \$5,505.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other unauthorized scrap tire accumulations (See Attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Unauthorized Solid Waste Dump	\$100 - \$25,000
Unauthorized Scrap Tire Accumulation	\$100 - \$25,000
Additive Costs per Statute	\$5 per scrap tire

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), it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, GMAC shall pay to the Department a civil penalty in the amount of \$5,505.00 for the violations cited herein. The penalty 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

All checks shall reference GMAC's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, GMAC shall cease and desist from operating an unauthorized scrap tire accumulation.

C. That, within thirty days of the issuance of this Order, GMAC shall submit a remediation plan to the Department in accordance with Division 4 regulations. This plan shall include a schedule for remediation completion. Remediation activities shall not commence until the remediation plan is approved by the Department. GMAC shall document remediation activities by submitting the following to the Department within thirty days of remediation completion:

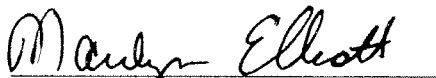
1. Time period in which the remediation activities occurred.
2. Total volume of scrap tires and solid waste removed from the property.
3. A copy of waste receipts documenting that all scrap tires were properly disposed of or beneficially reused in an approved manner and that all regulated solid waste was properly disposed.
4. Documentation that all regulated wastes were removed from the property.
5. Photographs of the site, before, during, and after remediation.

D. 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.

E. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against GMAC for the violations cited herein.

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

ORDERED and ISSUED this 30th day of November, 2010.



Lance R. LeFleur
Director

CERTIFICATE OF SERVICE

I, Wm. L. H. H. H. H. H., hereby certify that I have this date
served the foregoing Administrative Order on _____
by regular United States Mail, properly addressed and postage prepaid to:

GMAC Mortgage, L.L.C.
C/O CSC Lawyers Incorporating Service, Inc.
150 South Perry Street
Montgomery, Alabama 36104

Done this 30th day of November, 2010.

ATTACHMENT A

Penalty Calculation Worksheet

GMAC Mortgage, LLC
Property Preservation Department
1 First American Way
Building 2 Floor 1
Westlake, TX 76262

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Unauthorized Scrap Tire Accumulation	1	\$5,000	\$0	
Additive Penalty per Statute (101 Scrap Tires)		\$505	\$0	
Totals:	1	\$5,505	\$0	\$0

Economic Benefit*: \$0
Mitigating Factors: \$0
Ability to Pay*: \$0
Other Factors: \$0

Total Civil Penalty: **\$5,505**

Footnotes

* See the "Findings" of the Order

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Date: 12/13/2010

Valerie Jackson:

The following is in response to your 12/13/2010 request for delivery information on your Certified Mail(TM) item number 7108 2133 3936 5737 7551. The delivery record shows that this item was delivered on 12/09/2010 at 08:59 AM in MONTGOMERY, AL 36104. The scanned image of the recipient information is provided below.

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Jillian Barger
Jillian Barger

Address of Recipient:

2069

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service