



August 30, 2017

Mr. Marti Sergi  
VIVA Recycling of South Carolina, LLC  
PO Box 12879  
Charleston, SC 29422-2879

**RE: Administrative Order 17-20-SW  
VIVA Recycling of South Carolina, LLC  
Permit Number 082728-5201**

Dear Mr. Sergi:

Enclosed is the Administrative Order 17-20-SW, which is being issued for violations of the South Carolina Solid Waste Policy and Management Act of 1991 (Act) (Rev. 2002 and Supp. 2016) and associated regulations, Consent Order 15-05-SW, and Settlement Agreement and Consent Order of Dismissal (Docket No. 16-ALJ-07-0062-CC). Please review the order carefully and comply with its requirements, as stated within. Also, if you choose to appeal the Order, please carefully follow the necessary steps, as outlined in the attached Guide to Board Review.

This correspondence is being sent to you by first class mail and certified mail to better ensure delivery. If you have questions regarding the order please call the writer at (803) 898-0478. If you have questions regarding an appeal, please call the Clerk of the Board at (803) 898-3309.

Respectfully,

A handwritten signature in black ink that reads 'Robert S. McDaniel II'.

Robert S. McDaniel II,  
Manager, Enforcement Section  
Division of Compliance and Enforcement  
Bureau of Land and Waste Management

Enclosures

cc: Ms. Etta Williams Linen, SCDHEC, Office of General Counsel  
Ms. Christine Stanford-Coker, Area Director, Lowcountry EA Charleston Area, BEHS  
Mr. Van Keisler, P.G., Director, Compliance and Enforcement, BLWM

# **South Carolina Board of Health and Environmental Control**

## **Guide to Board Review**

### **Pursuant to S.C. Code Ann. § 44-1-60**

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

### **I. Filing of Request for Final Review**

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15<sup>th</sup> day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
  - The grounds for amending, modifying, or rescinding the staff decision;
  - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
  - the relief requested;
  - a copy of the decision for which review is requested; and
  - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:  
South Carolina Board of Health and Environmental Control  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201  
Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15<sup>th</sup> day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

*NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.*

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

## **II. Final Review Conference Scheduling**

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
  - include the place, date and time of the Conference;
  - state the presentation times allowed in the Conference;
  - state evidence may be presented at the Conference;
  - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
  - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

## **III. Final Review Conference and Decision**

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
  - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
    - Type of decision (permit, enforcement, etc.) and description of the program.
    - Parties
    - Description of facility/site
    - Applicable statutes and regulations
    - Decision and materials relied upon in the administrative record to support the staff decision.
  - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
  - Rebuttal by Department staff [15 minutes]
  - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

**The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.**

**IN THE STATE OF SOUTH CAROLINA  
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
(DEPARTMENT)**

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**IN RE: VIVA RECYCLING OF SOUTH CAROLINA, LLC  
PERMIT NUMBER 082728-5201 (PERMIT)  
BERKELEY COUNTY**

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**ADMINISTRATIVE ORDER  
17-20-SW**

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This Administrative Order (Order) is issued by the South Carolina Department of Health and Environmental Control (the "Department" or "DHEC") for violations of the South Carolina Solid Waste Policy and Management Act of 1991 (Act) (Rev. 2002 and Supp. 2016) and associated regulations, Consent Order 15-05-SW, and Settlement Agreement and Consent Order of Dismissal (Docket No. 16-ALJ-07-0062-CC).

**FINDINGS OF FACT**

**Permit and Conditions:**

1. VIVA Recycling of South Carolina, LLC (VIVA Moncks Corner) operates a Waste Tire Processing Facility located at located at 111 Old Depot Road, Moncks Corner, South Carolina (the "Facility" or "Site"). The Facility is owned by VIVA Recycling of South Carolina, LLC, which holds the Permit for the Site (the "Permittee" and "Property Owner"). VIVA Moncks Corner operates the Facility under the South Carolina Solid Waste Policy and Management Act of 1991, S.C. Code Ann. §44-96-10 et seq. (Rev 2002 and Supp. 2016) (the "Statute" or "Act"), and 8 S.C. Code Regs. 61-107.3 (2015), Solid Waste Management: Waste Tires ("Regulation"), and DHEC Permit No. 082728-5201 (the "Permit"), which was issued to VIVA Moncks Corner by the Department on April 23, 2013. The Permit documented the transfer of ownership from Rubber Recovery to VIVA Recycling of South Carolina, LLC. It also included a Permit modification that

included an increase in waste tire storage limits (from 307 tons to 1,188 tons), an updated operational plan, the addition of new equipment, and a new site drawing.

2. Special Conditions of the Permit state: 1) "The Permittee shall adhere to the approved design plans, specifications, and operating plans dated June 9, 1998; September 1, 2002; February 20, 2003; December 18, 2004; November 9, 2007; April 30, 2012 (revised February 22, 2013) unless Permit conditions state otherwise." and 2) "Waste tires at this facility shall be stored either on the ground in a tire pile or in trailers. Designated storage areas are shown on the approved drawing (revised on February 22, 2013), and a 50-foot buffer must be maintained around the entire tire pile. The total storage limit for waste tires at this facility shall not exceed 1,188 tons, or 99,000 passenger tire equivalents (PTE). If at any point this limit is reached, the Facility shall cease acceptance of waste tires."

In addition, the **approved design plans, specifications, and operating plans dated April 30, 2012 (revised February 22, 2013)** specify in approved drawing that waste tire storage areas are as follows: 15 full trailers, a 50'x100'x15' waste tire storage pile, and a second 50'x100'x15' waste tire storage pile.

**Compliance and Enforcement History Prior to the Issuance of the Settlement Agreement and Order of Dismissal from the Administrative Law Court on April 17, 2017:**

3. On June 17, 2015, the Department and VIVA Moncks Corner entered into **Consent Order 15-05-SW** (attached) to resolve Permit and regulatory violations noted in five (5) Department inspections from August 27, 2014 through November 20, 2014; and, that ordered VIVA Moncks Corner to meet the following requirements:
  - a. Within ninety (90) days of the execution date of the Order: remove all waste tires located in ditches, standing water and along roads; and, remove all waste tires that are stacked/piled against the building; and, reduce the size of waste tire pile located in the designated waste tire storage area to a size of 50 feet x 100 feet x 15 feet in accordance with the Permit; and, obtain and maintain 50-foot fire lanes around the perimeter of Permitted waste tire piles; and, remove the small tire pile against the fence that measured 105 feet x 29 feet x 3 feet.

- b. By December 31, 2015, remove the pile of miscellaneous tire waste/debris, soil, and whole tires located in areas that were marked for empty trailers/finished chip pile for stock per the approved drawing dated April 29, 2013.
  - c. Within thirty (30) days of the execution date of the Order, pay the first installment payment (\$1,000.00) of a civil penalty in the amount of twelve thousand dollars (\$12,000.00) for the violations cited in the Order. Thereafter, pay the installment payments in the amount of one thousand dollars (\$1,000.00) to the Department on the first business day of the month in accordance with a promissory note.
- 4. On September 28, 2015, Department staff conducted a routine compliance inspection at the Facility and observed and recorded that the size of tire piles and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken); and that there were tires in the fire lane along the fence. A copy of the inspection report was given to a Facility representative.
  - 5. On October 13, 2015, Department staff conducted a routine compliance inspection at the Facility and observed and recorded that the size of tire piles and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken); and that there were tires in the fire lane. Department staff noted on the inspection form that all tires should be removed from the fire lane. A copy of the inspection report was given to a Facility representative.
  - 6. On October 27, 2015, Department staff conducted a routine compliance inspection at the Facility and observed and recorded that the size of tire piles and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken). A copy of the inspection report was given to a Facility representative.
  - 7. On November 10, 2015, Department staff conducted a routine compliance inspection at the Facility and observed and recorded that the size of tire piles and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken); and that there were tires in the fire lane and some tires on the ground outside of the fence. Department staff recorded on the

inspection form that all tires should be removed from the fire lane and from outside of the fence. A copy of the inspection report was given to a Facility representative.

8. On November 23, 2015, Department staff conducted a routine compliance inspection at the Facility and observed and recorded that the size of tire piles and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken). A copy of the inspection report was given to a Facility representative.
9. On December 9, 2015, Department staff conducted a routine compliance inspection at the Facility and observed and recorded that the size of tire piles and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken). Department staff recorded on the inspection form that tire piles were still out of compliance from the approved plan. A copy of the inspection report was given to a Facility representative.
10. On December 21, 2015, Department staff conducted a routine compliance inspection at the Facility and observed and recorded that the size of tire piles and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken). A copy of the inspection report was given to a Facility representative.
11. On January 4, 2016, Department staff conducted a routine compliance inspection at the Facility and observed and recorded that the size of tire piles and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken). Department staff recorded that the waste tire storage areas were measured and documented. A copy of the inspection report was given to a Facility representative. Based on the measurements of the waste tire storage areas, Department staff calculated that the Facility had an estimated 222,000 PTEs on site, exceeding the Permitted capacity by an estimated 123,000 PTEs.
12. On January 11, 2016, the Department issued a **Demand Letter** requiring VIVA Recycling of South Carolina, LLC to cease accepting waste tires for processing.

13. On January 13, 2016, the Department received a request for the DHEC Board to conduct a Final Review Conference
14. On February 5, 2016, the DHEC Board denied the request and the directive that VIVA Moncks Corner cease accepting waste tires became final.
15. On March 3, 2016, VIVA Moncks Corner filed a Request for Contested Case Hearing before the Administrative Law Court (ALC), appealing the DHEC Board's decision.
16. On July 27, 2016, Department staff inspected the Facility and observed and recorded that the size of tire piles, the adequacy of fire lanes, and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken). Department staff recorded that the waste tire storage areas were measured and documented. A copy of the inspection report was given to a Facility representative. Based on the measurements of the waste tire storage areas, Department staff calculated that the Facility had an estimated 289,939 PTEs on site. This exceeds the Permitted capacity by an estimated 190,939 PTEs.
17. Subsequent inspections were conducted by Department staff on August 17, 2016, August 26, 2016, and September 15, 2016, and the following was observed and recorded during the inspection: the size of tire piles, the adequacy of fire lanes, and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken).
18. On September 22 and 23, 2016, the ALC held a hearing on the case, Docket No. 16-ALJ-07-0062-CC.
19. On September 28, 2016, Department staff inspected the Facility and observed and recorded that the size of tire piles, the adequacy of fire lanes, and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken).
20. On October 10, 2016, the Department staff inspected the Facility and observed and recorded that the size of tire piles, the adequacy of fire lanes, and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken). In addition, Department staff observed and



recorded that the Facility was shut down due to an arson investigation into a fire that damaged some processing equipment.

21. On October 20, 2016, the Department staff inspected the Facility and observed and recorded that the size of tire piles, the adequacy of fire lanes, and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken). Facility representative (Nick Bruno) stated that the Facility had no electrical service due to the fire and was not taking waste tires.
22. Subsequent inspections conducted by Department staff on November 14, 2016, November 30, 2016, December 7, 2016, and December 22, 2016, observed and recorded that the size of tire piles, the adequacy of fire lanes, and the maintenance of proper storage limits were rated unacceptable (serious problems and/or recurring problems with no corrective action taken). On the December inspections, Department staff additionally noted that the Facility was not removing 75% of the inventory per year as required by Regulation 61-107.3, Part IV Section A.4. This was rated as unacceptable. The Facility had no electrical service, with the exception of the office area, which had power. It was also observed and recorded that sidewalls had been cut off of truck tires for sale and were being stored at the Facility.
23. Subsequent inspections conducted by Department staff on January 9, 2017, January 27, 2017, February 14, 2017, February 23, 2017, and March 7, 2017, observed and recorded the following: the size of tire piles, the adequacy of fire lanes, the maintenance of proper storage limits, removal of 75% of inventory per year, roads passable for emergency vehicles, and stormwater diverted away from waste tire piles were rated unacceptable (serious problems and/or recurring problems with no corrective action taken). The Facility had no electrical service for the processing.
24. On March 29, 2017, the Department staff inspected the Facility and observed and recorded that the Facility was closed and that no access could be gained.
25. On April 4, 2017, the Department staff inspected the Facility and observed and recorded that the Facility was closed; however, Inspectors observed and recorded that waste tires

were now also being stored on the ground behind parked trailers and were in an unsecured area of the Site.

26. On April 11, 2017, the Department staff inspected the Facility and observed and recorded that the size of tire piles, the adequacy of fire lanes, the maintenance of proper storage limits, removal of 75% of inventory per year, roads passable for emergency vehicles, and stormwater diverted away from waste tire piles were rated unacceptable (serious problems and/or recurring problems with no corrective action taken). The Facility was open and representatives of VIVA Moncks Corner stated that there had been a theft of copper wiring and motors from equipment. Inspectors also observed and recorded that the Facility was without power and was not processing any waste tires, and that waste tires that had been observed previously remained on the ground behind parked trailers in an unsecured area on Site.
27. On April 17, 2017, the Department and VIVA Moncks Corner entered into a **Settlement Agreement and Consent Order of Dismissal (Docket No. 16-ALJ-07-0062-CC)** (attached) to resolve matters relating to the case under specific terms and conditions ("Agreement" or "Consent Order of Dismissal"). The Administrative Law Court (ALC) filed the Order on April 17, 2017.

**Continued Violations:**

28. Pursuant to provision # 2, on page 2 of the attached Consent Order of Dismissal, VIVA Moncks Corner failed to submit payment of a civil penalty in the amount of five thousand dollars (\$5,000.00) required under the Agreement. The payment was due on or before May 2, 2017.
29. On May 8, 2017, the Department issued a demand letter, via certified mail and e-mail to VIVA Moncks Corner, for payment of the five thousand dollar (\$5,000.00) civil penalty and demanded payment of the stipulated penalty under the Order in the amount of forty-seven thousand, five hundred dollars (\$47,500.00), because pursuant to provision # 3, on page 3 of the Consent Order of Dismissal, DHEC had determined that VIVA, due to non-payment of the civil penalty, was in "material non-compliance" with the Consent Order of Dismissal. The letter directed VIVA to pay a combined civil penalty and stipulated

penalty in the amount of fifty-two thousand, five hundred dollars (\$52,500.00) within thirty (30) days of receipt of the demand letter. Receipt of the email was verified by telephone call (McDaniel to Sergi) on May 8, 2017. Based upon this confirmation of receipt, the due date for payment was June 8, 2017.

30. Subsequent inspections conducted by Department staff on April 18, 2017, May 5, 2017, and May 16, 2017, observed and recorded that the size of tire piles, the adequacy of fire lanes, the maintenance of proper storage limits, removal of 75% of inventory per year, roads passable for emergency vehicles, and stormwater diverted away from waste tire piles were rated unacceptable (serious problems and/or recurring problems with no corrective action taken). It was also observed and recorded that the Facility was not operating and had no electrical service for the processing equipment. Facility representatives stated that seven (7) trailers of passenger tires were shipped to the VIVA Recycling facility in Jacksonville, Florida for processing during this period.
31. On June 8, 2017, VIVA Moncks Corner failed to pay the fifty-two thousand, five hundred dollars (\$52,500.00) combined civil penalty as required under the Department's letter of May 8, 2017 and as specified under the Consent Order of Dismissal.
32. On June 12, 2017, VIVA Moncks Corner failed to submit a certified check to the Department in the amount of two hundred fifteen thousand dollars (\$215,000.00) for temporary financial assurance at the Facility, as required by provision # 4 on page 3 of the Consent Order of Dismissal.
33. On June 21, 2017, the Department staff inspected the Facility and observed and recorded that the size of tire piles, the adequacy of fire lanes, the maintenance of proper storage limits, removal of 75% of inventory per year, roads passable for emergency vehicles, and stormwater diverted away from waste tire piles were rated unacceptable (serious problems and/or recurring problems with no corrective action taken). It was also observed and recorded that the Facility was closed, locked and unattended. Two Berkeley County Permits were posted on the door (one for electrical, the other for temporary use); but each had expired. Department staff noted that the condition of the

Facility was relatively the same for the past year. Mosquitoes were present in the trailer parking area and presented a significant problem.

34. As of the writing of this NOAV, there is no evidence that VIVA has attempted to comply with the Order, which states that "VIVA Moncks Corner agrees to complete removal and processing of waste tire and partial shreds to less than 81,000 PTEs at the Facility."
35. On June 29, 2017, the Department sent the Notice of Alleged Violation and Notice of Enforcement and Permit Revocation Conference to VIVA Moncks Corner by certified mail, which was received on July 3, 2017. The notice provided the Permittee an opportunity to show compliance with all lawful requirements for retention of the Permit.
36. On July 20, 2017, the Department conducted the Enforcement and Permit Revocation Conference. Mr. Marty Sergi represented VIVA Moncks Corner.

### **APPLICABLE LAW**

#### **STATUTE:**

**South Carolina Solid Waste Policy and Management Act of 1991, S.C. Code Ann. §44-96-10 et seq. (Rev 2002 and Supp. 2016):**

**S.C. Code Ann. §44-96-100** provides "Violations of certain regulations; issuance of order for compliance or civil action for injunctive relief; willful violations; penalty; additional powers and duties of department.

(A) Whenever the department determines that a person is in violation of a regulation promulgated pursuant to this article regarding Sections 44-96-160(X) (Used Oil), 44-96-170(H) (Waste Tires), or 44-96-190(A) (Yard trash, compost), the department may issue an order requiring the person to comply with the regulation or the department may bring civil action for injunctive relief in the appropriate court or the department may request that the Attorney General bring civil or criminal enforcement action under this section. The department also may impose reasonable civil penalties not to exceed ten thousand dollars, for each day of violation, for violations of the regulations promulgated pursuant to this article regarding Sections

44-96-160(X), 44-96-170(H), or 44-96-190(A). After exhaustion of administrative remedies, a person against whom a civil penalty is invoked by the department may appeal the decision of the department or board of the court of common pleas, pursuant to the Administrative Procedures Act."

**S.C. Code Ann. § 44-96-260 (2)** provides, "the Department is authorized to: ... (2) issue, deny, revoke, or modify Permits, registrations, or orders under such conditions as the department may prescribe, pursuant to procedures consistent with the South Carolina Administrative Procedures Act, for the operation of solid waste management facilities[.]"

**S.C. Code Ann. § 44-96-290(H)** provides, "A Permit issued pursuant to this article shall contain such conditions or requirements as are necessary to comply with the requirements of this article and the regulations of the department and to prevent a substantial hazard to human health or to the environment. Permits issued under this section shall be effective for the design and operational life of the facility, to be determined by the department, subject to the provisions of this article. However, at least once every five years, the department shall review the environmental compliance history of each Permittee. The time period for review for each category of Permits shall be established by the department by regulation. If, upon review, the department finds that material or substantial violations of the Permit demonstrate the Permittee's disregard for or inability to comply with applicable laws, regulations, or requirements and would make continuation of the Permit not in the best interests of human health and safety or the environment, the department may, after a hearing, amend or revoke the Permit, as appropriate and necessary. When a Permit is reviewed, the department shall include additional limitations, standards, or conditions when the technical limitations, standards, or regulations on which the original Permit was based have been changed by statute or amended by regulation."

**S.C. Code Ann. § 44-96-440** provides, "It shall be unlawful for any person to fail to comply with the Act and any regulations promulgated pursuant to the Act, or to fail to comply with any Permit issued under the Act, or to fail to comply with any order issued by the Board, Commissioner, or Department."

**S.C. Code Ann. § 44-96-450** provides, "Whenever the Department finds a person is in violation of a Permit, regulation, standard, or requirement under this article, the Department may issue an

order requiring the person to comply with the Permit, regulation, standard, or requirement...the Department may also impose reasonable civil penalties established by regulation not to exceed ten thousand dollars for each day of violation... Each day of noncompliance with an order issued pursuant to this section or noncompliance with a Permit, regulation, standard, or requirement established under this article."

### **REGULATION:**

#### **8 S.C. Code Regs. 61-107.3 (2015), Solid Waste Management: Waste Tires:**

##### **Part III. Waste Tire Collection Facility Requirements, Section D. Operating Criteria:**

1. "A waste tire pile or processed tire pile shall have no greater than the following maximum dimensions: a. Width: fifty (50) feet; b. Area: ten thousand (10,000) square feet; and, c. Height: fifteen (15) feet."
2. "A fire lane fifty (50) feet wide shall be placed around the perimeter of each waste tire pile. Access to the fire lane for emergency vehicles must be unobstructed at all times."
3. "The owner or operator of a waste tire facility shall control mosquitoes and rodents to protect public health and welfare. The owner or operator shall implement such mosquito control measures or other pest control measures as may be required by the Department and/or local mosquito control program. Records shall be kept of all mosquito control activities and/or preventive measures and shall be made available upon request."

##### **Part IV. Waste Tire Processing Facility Requirements,**

###### **Section A. General Requirements for Waste Tire Processing Facilities:**

2. "All waste tire processing facilities shall be operated in accordance with this regulation."
3. "A waste tire processing facility shall not accept any waste tires for processing in excess of its Permitted storage limit. ... Each waste tire or processed tire stored in excess of the Permitted storage limit may be considered a separate violation of this regulation."
4. "At least seventy-five (75) percent of the waste tires and processed tires that are both stored at the facility at the start of a calendar year, and are delivered to the facility during

the year, shall be processed and removed from the facility during the calendar year."

5. "All waste tire processing facilities shall comply with the location, design, and operational standards of this regulation unless otherwise exempted or approved by the Department."

**Section B. Location, Design and Operating Criteria:**

1. "All waste tire processing facilities shall comply with the location and design criteria of Part III.C of this regulation."
2. "All waste tire processing facilities shall comply with the operating criteria of Part III.D of this regulation, unless otherwise exempted or approved by the Department."

**Waste Tire Processing Permit #082728-5201 as modified on April 29, 2013:**

**A. Special Conditions:**

1. "The Permittee shall adhere to the approved design plans, specifications, and operating plans dated June 9, 1998; September 1, 2002; February 20, 2003; December 18, 2004; November 9, 2007; April 30, 2012 (revised February 22, 2013) unless Permit conditions state otherwise."
2. "Waste tires at this facility shall be stored either on the ground in a tire pile or in trailers. Designate storage areas are shown on the approved drawing (received February 22, 2013), and a 50-foot buffer must be maintained around the entire tire pile. The total storage limit for waste tires at this facility shall not exceed 1,188 tons, or 99,000 passenger tire equivalents (PTE). If at any point this limit is reached, the facility shall cease acceptance of waste tires."

**B. Approved design plans, specifications, and operating plans dated April 30, 2012 (revised February 22, 2013):**

1. Approved drawing (revised February 22, 2013) denotes waste tire storage areas as follows: 15 full trailers, a 50'x100'x15' waste tire storage pile, and a second 50'x100'x15' waste tire storage pile.

**Settlement Agreement and Consent Order of Dismissal (Docket NO. 16-ALJ-07-0062-CC) is attached hereto and incorporated by reference.**

**CONCLUSIONS OF LAW:**

**Solid Waste Management: Waste Tires Regulation 61-107.3, Section A. General Requirements for Waste Tire Processing Facilities, in that VIVA Moncks Corner:**

1. Per Findings of Fact 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 17, 18, 19, 20, 21, 24, 28, and 31, failed to comply with the requirement that "All waste tire processing facilities shall be operated in accordance with this regulation."
2. Per Findings of Fact 10, 14, 15, 17, 18, 19, 20, 21, 24, 28, and 31, failed to comply with the requirement that "A waste tire processing facility shall not accept any waste tires for processing in excess of its Permitted storage limit. ..."
3. Per Findings of Fact 21, 24, 28, and 31, failed to comply with the requirement that "At least seventy-five (75) percent of the waste tires and processed tires that are both stored at the facility at the start of a calendar year, and are delivered to the facility during the year, shall be processed and removed from the facility during the calendar year."
4. Per Findings of Fact 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 17, 18, 19, 20, 21, 24, 28, and 31, failed to comply with the requirement that "All waste tire processing facilities shall comply with the location, design, and operational standards of this regulation unless otherwise exempted or approved by the Department."

**Waste Tire Processing Permit # 082728-5201, Special Conditions, in that VIVA Moncks Corner:**

1. Per Findings of Fact 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 17, 18, 19, 20, 21, 24, 28, and 31, failed to comply with Special Condition Number 1 of the Permit that states: "The Permittee shall adhere to the approved design plans, specifications, and operating plans dated June



9,1998; September 1, 2002; February 20, 2003; December 18, 2004; November 9, 2007; April 30, 2012 (revised February 22, 2013) unless Permit conditions state otherwise."

2. Per Findings of Fact 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 17, 18, 19, 20, 21, 24, 28, and 31, failed to comply with Special Condition Number 2 of the Permit that states: "Waste tires at this facility shall be stored either on the ground in a tire pile or in trailers. Designate storage areas are shown on the approved drawing (received February 22, 2013), and a 50-foot buffer must be maintained around the entire tire pile. The total storage limit for waste tires at this facility shall not exceed 1,188 tons, or 99,000 passenger tire equivalents (PTE). If at any point this limit is reached, the facility shall cease acceptance of waste tires."
3. Per Findings of Fact 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 17, 18, 19, 20, 21, 24, 28, and 31, failed to comply with Approved design plans, specifications, and operating plans dated April 30, 2012 (revised February 22, 2013) that states: "Approved drawing (revised February 22, 2013) denotes waste tire storage areas as follows: 15 full trailers, a 50'x100'x15' waste tire storage pile, and a second 50'x100'x15' waste tire storage pile."

**Settlement Agreement and Consent Order of Dismissal (Docket No. 16-ALJ-07-0062-CC)**  
**specific terms and conditions, in that VIVA Moncks Corner:**

1. Per Findings of Fact 26 and 29, failed to submit full payment of the civil penalty and stipulated penalty; and,
2. Per Finding of Fact 30, failed submit the required temporary financial assurance for the Facility.

Based on the above findings, it is clear that VIVA Moncks Corner has committed numerous and continuous violations since obtaining its waste tire Permit in 2013. The noted violations are material and substantial. The Department concludes that VIVA Moncks Corner has violated the South Carolina Solid Waste Policy and Management Act of 1991, S.C. Code Ann. §44-96-10 et seq. (Rev 2002 and Supp. 2016); 8 S.C. Code Regs. 61-107.3 (2015), Solid Waste Management: Waste Tires; Permit Number 082728-5201; Consent Order 15-05-SW; and, Settlement Agreement and Consent Order of Dismissal (Docket No. 16-ALJ-07-0062-CC). The Department further concludes that the material and substantial violations that VIVA Moncks Corner has committed demonstrate its disregard for and inability to comply with applicable laws, regulations, or Permit conditions. As such, the Department concludes that continuation of the Permit is not in the best interests of human health and safety or the environment and that revocation of the Permit is warranted.

**NOW, THEREFORE IT IS ORDERED** pursuant to the South Carolina Solid Waste Policy and Management Act of 1991 (Rev. 2002) that Permit Number 082728-5201 is hereby revoked.

**IT IS FURTHER ORDERED** pursuant to the South Carolina Solid Waste Policy and Management Act of 1991 (Rev. 2002) and Regulation 61-107.3 (rev. 2015) that:

1. Upon the effective date of the Order, the Department shall remove VIVA Moncks Corner from the Waste Tire Rebate List;
2. Upon the effective date of the Order, VIVA Moncks Corner shall immediately cease all waste tire collection and processing operations at the Facility and begin closure of the Facility as follows:
  - a. Within five (5) days of the effective date of the Order, post closure signs at the Facility;
  - b. Within thirty (30) days of the effective date of the Order, submit a Closure Plan to the Department for the removal and/or processing of all waste tires, partial waste

tires, shreds, used tires, tire delivered fuel, granulated waste tire products, side walls, metal from waste tire processing, and solid waste at the Facility within six (6) months of the Department's approval of the plan. If waste tires are to be processed under the Closure Plan, the plan shall describe the specific processing equipment that will be used, the expected throughput per hour for each shredder and side wall cutter, the number of operational hours per day, and the processing days per week. The Closure Plan shall provide 1) the Permitted solid waste management facilities and companies that will receive waste tires, products and solid waste, 2) the registered waste tire haulers and companies that shall transport waste tires, products and solid waste; 3) timelines for closure activities; and 4) included a monthly progress report to the Department that shall be due on the tenth day of each month for the previous month. The progress report shall include, but not be limited to, the following:

- i. Tons of waste tires, partial waste tires, and/or shreds of waste tires removed from the Facility, the destination of each shipment, and the costs for each shipment;
    - ii. Tons of processed waste tires, used tires, and side walls removed from the facility, the destination of the processed waste tires, and the net profit for each shipment; and,
    - iii. Tons of metal from waste tire processing and solid waste removed from the Facility, the destination of each shipment, and the costs for each shipment;
  - c. If the Department requests any revisions to the Closure Plan, VIVA Moncks Corner shall provide revisions to the Department within ten (10) days; and,
  - d. Within five (5) days from receipt of the Department's written approval of the Closure Plan, VIVA Moncks Corner shall implement the plan;
3. Within five (5) days of the effective date of the Order, VIVA Moncks Corner shall obtain a third party company to provide mosquito control and start control measures. Mosquito controls shall be continued until closure of the Facility is complete and approved by the Department; and,

4. Within thirty (30) days of the effective date of the Order, pay a combined civil penalty and stipulated penalty in the amount of fifty-two thousand, five hundred dollars (\$52,500.00) for violation of Settlement Agreement and Consent Order of Dismissal (Docket No. 16-ALJ-07-0062-CC).

**IT IS FURTHER ORDERED** that a civil penalty in the amount of one million six hundred forty-seven thousand three hundred seventy two dollars (\$1,647,372.00) is hereby assessed against VIVA Moncks Corner for the violations cited herein; however, the civil penalty shall be suspended pending compliance with the requirements of this Order. If VIVA Moncks Corner fails to comply with any terms of this Order, the full penalty shall immediately become due and payable upon the issuance of a demand letter to VIVA Moncks Corner for payment of the suspended civil penalty.

**IT IS FURTHER ORDERED** that this Administrative Order governs only the liability to the Department for civil sanctions arising from the civil matters set forth herein and constitutes the entire requirements between the Department and VIVA Moncks Corner with respect to the resolution of these civil matters.

**IT IS FURTHER ORDERED** that failure to meet deadlines established herein or any other violation of the provisions of this Administrative Order may be deemed a violation of the Act. Upon ascertaining any such violation(s), the Department may initiate action to obtain compliance with this Administrative Order, the Regulation, and the Act.

**IT IS SO ORDERED.**

FOR THE SOUTH CAROLINA DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL

Myra Q. Reece  
Myra Q. Reece  
Director of Environmental Affairs

Date: 8/23/17

Daphne G. Neel  
Daphne G. Neel, Chief  
Bureau of Land and Waste Management

Date: 8/23/17

Etta R. Williams Linder  
Reviewed by: Attorney  
Office of General Counsel

Date: 8/23/2017

2 Attachments:

1. Consent Order 15-05-SW
2. Settlement Agreement and Consent Order of Dismissal (Docket No. 16-ALJ-07-0062-CC)

**Attachment 1**

**Consent Order 15-05-SW**

**IN THE STATE OF SOUTH CAROLINA  
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
(DEPARTMENT)**

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**IN RE: VIVA RECYCLING OF SOUTH CAROLINA, LLC  
VIVA RECYCLING OF SOUTH CAROLINA, LLC (FACILITY)  
BERKELEY COUNTY**

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**CONSENT ORDER  
15-05-SW**

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This Consent Order (Order) is entered into between the Department and VIVA Recycling of South Carolina, LLC (VIVA Recycling) to resolve violations presented herein regarding the South Carolina Solid Waste Policy and Management Act of 1991 (Act) (Rev. 2002) and associated regulations.

**FINDINGS OF FACT**

1. On June 9, 1998, the Department issued a Waste Tire Processing Permit, permit number 082728-5201 (Permit), to Rubber Recovery, Inc., for the operation of a waste tire processing facility located at 111 Old Depot Road, Moncks Corner, South Carolina. On April 29, 2013, the Department approved a permit modification and transfer of ownership of this Permit from Rubber Recovery, Inc. to VIVA Recycling of South Carolina, LLC (VIVA Recycling). This modification included an increase in waste tire storage limits, an updated operational plan, the addition of new equipment, and a new site drawing. The new waste tire storage limit was increased from 307 tons to 1,188 tons. In passenger tire equivalents (PTE), the maximum quantity of waste tires that could be stored on-site was 99,000 PTE.
2. On August 27, 2014, the Department conducted a routine compliance inspection of the Facility. The Department inspector (Wheatley) observed and recorded on the inspection form that the waste tire piles were over the permitted size (permitted size 50 feet x 100 feet x 15 feet) and fifty (50) foot fire lanes around the waste tire piles were not being maintained, as required by the applicable regulation. The Department inspector noted on the inspection form that measurements of the waste tire piles would be taken at the next inspection. Ms. Antha Willis (Ms. Willis), General Manager, was present for the inspection.

3. On September 4, 2014, the Department conducted a routine compliance inspection of the Facility. The Department inspectors (Wheatley and Williams) observed and recorded on the inspection form that fire lanes were out of compliance; both permitted tire piles were double their permitted size; and the primary shredder was down for repairs. Mr. Nick Bruno, Chief Operating Officer, was present for the inspection.
4. On September 10, 2014, Department personnel (Cook, Brownson, Snyder, and Wheatley) conducted a routine compliance inspection of the Facility. The Department inspector (Wheatley) observed and recorded on the inspection form that there were no changes at the Facility since the September 4, 2014 inspection, in that the fire lanes and tire piles were still out of compliance. Ms. Willis was present for the inspection.
5. On October 3, 2014, VIVA Recycling was referred to the Department's Enforcement Section.
6. On October 14, 2014, Department personnel (Brownson, Snyder, and Williams) conducted a routine compliance inspection of the Facility and measured the tire piles. Department personnel observed and recorded the following:
  - a. Inside the main building, waste tires stored in rows were being set up for tire buffing; piles of waste tires blocked dock entrances.
  - b. A pile of waste tires was up against one side of building that measured 37 feet x 10 feet x 3.5 feet; and, approximately 400 - 450 waste tires were stacked against the building.
  - c. A pile of waste tires in the waste tire storage area measured 297 feet x 75 feet x 10 feet.
  - d. No fire lanes existed between the waste tire storage area and soil/mulch/crumb rubber pile.
  - e. A pile of miscellaneous tire waste, soil, and whole tires that went all the way to fence line and measured 101 feet x 120 feet x 15 feet was in an area designated for empty trailers per the approved permit drawing dated April 29, 2013.
  - f. Whole waste tires and miscellaneous debris were located in the area designated for the finished chip pile for stock per the approved permit drawing dated April 29, 2013.
  - g. Waste tires were observed in ditches, standing water, and along roads in several areas of the Facility.
  - h. A tire pile measuring 150 feet x 146 feet x 15 feet blocked all bays to loading docks 1 - 4 and extended to the building.



- i. A smaller tire pile was against the fence measuring 105 feet x 29 feet x 3 feet.
7. On October 22, 2014, the Department issued a Notice of Alleged Violation/Notice of Enforcement Conference (NOAV/EC) to VIVA Recycling via first class and certified mail. The certified mail was delivered on October 24, 2014.
8. On November 10, 2014, the Department held an enforcement conference with Mr. Bruno and Mr. Marty Sergi, CEO and President, in attendance. Mr. Sergi stated the following:
  - a. Facility is designed for the receipt of five (5) million tires annually when equipment is working; however, poor maintenance and poor training created problems with work flow. These problems have been addressed since the NOAV was issued.
  - b. All shredders are being retrofitted.
  - c. Knives are being changed every six (6) weeks.
  - d. There are two (2) primary shredders.
  - e. With regards to the October 14, 2014 inspection:
    - i. Inside the main building, tires have been removed from the dock entrances; there will be 1,000 waste tires/day stacked in rows inside the main building for the buffing process.
    - ii. There are now fire lanes between waste tire storage area and soil/mulch/crumb rubber pile.
    - iii. The team will clean up the area along roads and ditches once a week to remove tires that fall off when trailers are opened.
    - iv. The tire pile that measured 150 feet x 146 feet x 15 feet, which blocked all bays to the loading docks 1 – 4 and extended all the way to the building, is now half that size.
    - v. The smaller pile against the fence measuring 105 feet x 29 feet x 3 feet, is now gone.
  - f. The Facility will be running three (3) eight-hour shifts, five days/week.
  - g. It would take the Facility at least sixty (60) days to get back into compliance due to shredders being inoperable.

The Department advised Mr. Sergi that a permit modification would be necessary because the tire buffing process is not addressed in the current permit.

9. On November 20, 2014, Department personnel (Snyder and McLain) conducted a follow-up inspection of the Facility with Mr. Sergi present for the inspection. Department personnel observed and recorded the following on the inspection form:

- a. The fire lane between the edge of the dock to the edge of the oversized waste tire pile in the designated waste tire pile area was approximately fifty-two (52) feet. This improvement was noted on inspection form;
- b. The area where tires were stacked on the loading dock on the side of the building is not a permitted staging area; Mr. Sergi stated that this is a staging area for the new buffing machines;
- c. The pile of waste tires in the area designated for waste tire storage remains over the permitted size and had trash rubber mixed in with whole waste tires;
- d. The smaller pile of waste tires remained at the fence;
- e. Waste tires remained in ditches and standing water; and,
- f. Whole waste tires and miscellaneous debris remained in the area designated for the finished chip pile for stock.

**APPLICABLE LAW:**

**STATUTES:**

South Carolina Solid Waste Policy and Management Act of 1991 (Act), S.C. Code Ann. §44-96-100 (2002), provides that whenever the Department finds that a person is in violation of a regulation promulgated pursuant to § 44-96-170 (Waste Tires), the Department may issue an order requiring the person to comply with the regulation. The Department may also impose reasonable civil penalties established by regulation not to exceed ten thousand dollars (\$10,000) for each day of violation. Each day of noncompliance with an order issued pursuant to this section or noncompliance with a permit, regulation, standard, or requirement established under the Act constitutes a separate offense.

**REGULATIONS:**

Solid Waste Management: Waste Tires Regulation 61-107.3, Section G.4., states, "All waste tire collection

facilities and any processing or disposal facilities which store greater than one hundred twenty (120) waste tires or processed tires at any one time must comply with the following technical and operational standards:

b. A waste tire pile or processed tire pile shall have no greater than the following maximum dimensions:

- 1) Width: 50 feet;
- 2) Area: 10,000 square feet; and,
- 3) Height: 15 feet;

c. A 50 foot wide fire lane shall be placed around the perimeter of each waste tire pile. Access to the fire lane for emergency vehicles must be unobstructed at all times.”

**Waste Tire Processing Permit 082728-5201:**

**A. Special Conditions**

1. The Permittee shall adhere to the approved design plans, specifications, and operational plans dated June 9, 1998, September 1, 2002, February 20, 2003, December 18, 2004, November 9, 2007, and April 30, 2012 (revised February 22, 2013) unless the permit conditions state otherwise.
2. Waste tires at this facility shall be stored either on the ground in a tire pile or in trailers. Designated storage areas are shown on the approved drawing (received February 22, 2013), and a 50-foot buffer must be maintained around the entire tire pile. The total storage limit for waste tires at this facility shall not exceed 1,188 tons, or 99,000 passenger tire equivalents (PTE). If at any point this limit is reached, the facility shall cease acceptance of waste tires.

**CONCLUSIONS OF LAW:**

Based on the above findings, the Department concludes that VIVA Recycling has violated the South Carolina Solid Waste Policy and Management Act of 1991 (Act) (2002), Solid Waste Management: Waste Tires Regulation 61-107.3 (Supp. 2012), and, Waste Tire Processing Permit 082728-5201.

1. Pursuant to Findings of Fact #'s 2., 3., 4., 5.a., b., c., e., f., h., i., and 7., the Department alleges that VIVA Recycling has violated Solid Waste Management: Waste Tires Regulation 61-107.3.G.4.b. and Waste Tire Processing Permit 082728-5201 in that during inspections on August 27, 2014, September 4, 2014, September 10, 2014, October 14, 2014, and November 20, 2014, waste tire piles exceeded maximum dimensions allowed by Regulation; exceeded limits and maximum dimensions allowed by the Permit; and, waste tires were being stored outside of designated areas pursuant to the drawing approved April 29, 2013.
2. Pursuant to Finding of Fact #'s 2., 3., 4., 5.b., d., h., and 7., the Department alleges that VIVA Recycling has violated Solid Waste Management: Waste Tires Regulation 61-107.3.G.4.c. and Waste Tire Processing Permit 082728-5201 in that during inspections on August 27, 2014, September 4, 2014, September 10, 2014, October 14, 2014, and November 20, 2014, fire lanes were not maintained around waste tire piles according to Regulation and the Permit.

**NOW, THEREFORE IT IS ORDERED AND AGREED** with the consent of VIVA Recycling and pursuant to the South Carolina Solid Waste Policy and Management Act of 1991, Regulation 61-107.3, and Permit 082728-5201, that VIVA Recycling shall complete the following requirements:

1. Within ninety (90) days of the execution date of the Order:
  - a. Remove all waste tires located in ditches, standing water and along roads; and,
  - b. Remove all waste tires that are stacked/piled against the building; and,
  - c. Reduce size of waste tire pile located in the designated waste tire storage area to a size of 50 feet x 100 feet x 15 feet in accordance with the Permit; and,
  - d. Obtain and maintain 50-foot fire lanes around the perimeter of permitted waste tire piles; and,
  - e. Remove the small pile against the fence that measured 105 feet x 29 feet x 3 feet.

The execution date of the Order is the date that the Order is signed by the Director of Environmental Affairs.

2. By December 31, 2015, remove the pile of miscellaneous tire waste/debris, soil, and whole tires located in areas that were marked for empty trailers/finished chip pile for stock per the approved drawing dated April 29, 2013.

3. Within thirty (30) days of the execution date of the Order, pay the first installment payment of a civil penalty in the amount of twelve thousand dollars (\$12,000.00) for the violations cited herein. Thereafter, pay the installment payments in the amount of one thousand dollars (\$1,000.00) to the Department on the first business day of the month in accordance with a promissory note.

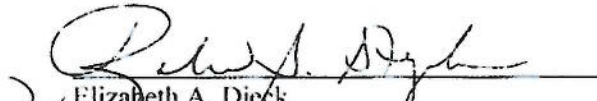
The payment of the penalty amount must be in the form of a check payable to SCDHEC with the number of the Order (15-05-SW) written on the check. All communication regarding this Order and its requirements shall be addressed to:

SCDHEC - BLWM  
Division of Compliance and Enforcement  
Enforcement Section  
Attn: Beverly McLeod  
2600 Bull Street, Columbia, SC 29201-1708

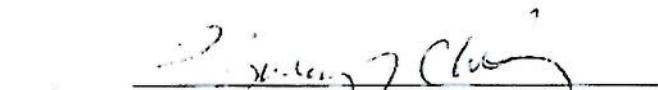
**IT IS FURTHER ORDERED AND AGREED** that this Consent Order governs only the civil liability to the Department for civil sanctions arising from the matters set forth herein and constitutes the entire agreement between the Department and VIVA Recycling of South Carolina, LLC with respect to the resolution and settlement of these civil matters. The parties are not relying upon any representations, promises, understandings or agreements except as expressly set forth within this Order.

**IT IS FURTHER ORDERED AND AGREED** that failure to meet deadlines established herein or any other violation of the provisions of this Order may be deemed a violation of the Act. Upon ascertaining any such violation(s), the Department may initiate action to obtain compliance with this Order, the Regulation, and the Act.

FOR THE SOUTH CAROLINA DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL

  
Elizabeth A. Dieck  
Director of Environmental Affairs

Date: 6/17/2015

  
Daphne G. Neel, Chief  
Bureau of Land and Waste Management

Date: 6-16-15

  
Van Keisler, P.G., Director  
Division of Compliance and Enforcement

Date: 6-16-15

  
Reviewed by: Attorney  
Office of General Counsel

Date: 6-16-2015

WITH CONSENT - VIVA RECYCLING OF SOUTH CAROLINA, LLC

  
(Signature)

Date: 6/10/15

MARK SENG, PRESIDENT  
(Please clearly print name and title)

**Attachment 2**

**Settlement Agreement and Consent Order of Dismissal**

**Docket No. 16-ALJ-07-0062-CC**

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

VIVA Recycling of South Carolina LLC,  
d/b/a Moncks Corner Tire

Petitioner,

v.

South Carolina Department of Health and  
Environmental Control,

Respondent.

Docket No. 16-ALJ-07-0062-CC

**SETTLEMENT AGREEMENT AND  
CONSENT ORDER OF DISMISSAL**

**FILED**

APR 17 2017

ADMINISTRATIVE LAW COURT

The above-referenced matter is before the Administrative Law Court ("ALC") pursuant to the Petitioner, VIVA Recycling of South Carolina, LLC d/b/a Moncks Corner Tire's ("VIVA Moncks Corner" or "Petitioner") request for contested case hearing of the January 11, 2016 cease and desist letter (the "January 11 Letter") that Respondent, South Carolina Department of Health and Environmental Control ("DHEC" or "Respondent"), issued to VIVA Moncks Corner regarding its operation of a tire processing facility located at 111 Old Depot Road, Moncks Corner, South Carolina (the "Facility" or "Site"), owned by VIVA Recycling of South Carolina, LLC ("VIVA Moncks Corner").

WHEREAS, VIVA Moncks Corner operates at the Facility under **South Carolina Solid Waste Policy and Management Act of 1991**, S.C. Code Ann. §44-96-10 et seq. (Rev 2002) (the "Statute"), and 8 S.C. Code Regs. 61-107.3 (2015), **Solid Waste Management: Waste Tires** ("Regulation"), and DHEC Permit No. 082728-5201 (the "Permit"), which authorizes VIVA Moncks Corner to, among other things, accept waste tires at the Facility for collection and processing, such as grinding; and



WHEREAS, in its January 11 Letter, DHEC directed VIVA Moncks Corner to cease accepting waste tires for collection and/or processing at the Facility until certain conditions were satisfied; and

WHEREAS, upon receiving the January 11 Letter, VIVA Moncks Corner filed on January 13, 2016, a request for the DHEC Board to conduct a Final Review Conference, and the DHEC Board denied such request on February 5, 2016; and

WHEREAS, on March 3, 2016, VIVA Moncks Corner filed a Request for Contested Case Hearing, appealing the DHEC Board's February 5, 2016 denial; and

WHEREAS, on September 22 and 23, 2016, the ALC held a hearing in the above-captioned matter, Docket No. 16-ALJ-07-0062-CC (the "Case"); and

WHEREAS, in order to resolve this matter, and with no admission of law or fact by either of the parties, the parties hereby agree, pursuant to S.C. Code Ann. § 1-23-320(F), to settle this matter under the following terms and conditions, and the Court approves this Settlement Agreement and Consent Order of Dismissal ("Agreement" or "Order"):

1. On the day that VIVA Moncks Corner receives notice that this Order has been filed by the ALC (either via e-mail or regular mail, whichever occurs first), VIVA Moncks Corner shall cease taking additional waste tires and/or used tires at the Facility with one exception: VIVA Moncks Corner may relocate seven (7) trailers containing waste tires from St. Stephen to the Facility.

2. Within five (5) days of the day that VIVA Moncks Corner receives notice that this Order has been filed by the ALC (either via e-mail or regular mail, whichever occurs first), VIVA Moncks Corner shall pay to DHEC of a civil penalty in the total amount of \$5,000.00.

3. VIVA shall pay a stipulated penalty in the amount of \$47,500.00, upon "material" non-compliance with any of the provisions of this Order, the Statute, the Regulation, and the Permit. The Department, at its discretion, may require payment of all or part of the stipulated penalty based upon the occurrence of a material non-compliance with this Order, the Statute, the Regulation, or the Permit. "Material" non-compliance shall include, but not be limited to, the following specific situations or occurrences: acceptance of waste tires and/or used tires at the Facility (except for the seven (7) trailers from St. Stephen), prior to DHEC authorizing, in writing, that VIVA Moncks Corner may take waste or used tires at the Facility (see Paragraphs 1 and 5 of this Order); failure to complete the processing of waste tires and partial shreds to bring the Facility in compliance with its Permit at the Facility within the Compliance Period; failure to notify DHEC of any revisions in regulated operations, or additions of regulated equipment under its Permit; and failure to implement and/or perform a mosquito control program at the Facility as agreed to in Paragraph 7 of this Agreement. In addition, violations of Permit conditions and operational requirements under the Permit and operating criteria under Part IV, Section B2 of the Regulation that are not specifically addressed in this Order may be considered a "material" non-compliance issue, depending upon the severity of the non-compliance, which will be determined by the Department after input from, and a thirty (30) day opportunity to cure by, VIVA Moncks Corner.

4. Within forty-five (45) days of the day that VIVA Moncks Corner receives notice that this Order has been filed by the ALC (either via e-mail or regular mail, whichever occurs first), VIVA Moncks Corner, or its designee, shall submit a certified check to DHEC in the amount of \$215,000.00 for temporary financial assurance for the Facility. DHEC is the sole beneficiary of the temporary financial assurance.

a. Both parties agree, that, if the temporary financial assurance is not submitted within forty-five (45) days of the day that VIVA Moncks Corner receives notice that this Order has been filed by the ALC, this Agreement shall be null and void, and DHEC will request a Final Order and Decision from the ALC in this matter.

b. DHEC and VIVA Moncks Corner agree that this temporary financial assurance shall be drawn down in four (4) separate phases as the waste tires and/or partial shreds are removed or processed into tire derived fuel or other specified products in each of the four (4) corresponding zones. For the purposes of temporary financial assurance reimbursement, waste tires and/or partial shreds shall not be placed in another zone or loaded into trailers for on-site storage. Upon the completion of each phase as verified by the Department, DHEC shall return the temporary financial assurance to VIVA Moncks Corner (or to VIVA Moncks Corner's designee if the designee submitted the temporary financial assurance to DHEC on VIVA Moncks Corner's behalf), in the following manner:

i. \$50,000.00 for all waste tires and partial shreds on the ground (not in trailers or buildings) in Zone 1, as indicated on the aerials set forth as Exhibit A to this Order;

ii. \$50,000.00 for all waste tires and partial shreds on the ground (not in trailers or buildings) in Zone 2, as indicated on the aerials set forth as Exhibit A to this Order;

iii. \$50,000.00 for all waste tires and partial shreds on the ground (not in trailers or buildings) in Zone 3, as indicated on the aerials set forth as Exhibit A to this Order; and

iv. \$65,000.00 for all waste tires and partial shreds on the ground (not in trailers or buildings) in excess of the Facility's permitted limit of 99,000 passenger tire equivalents ("PTEs") in Zone 4, as indicated on the aerials set forth as Exhibit A to this Order.

Tire-derived fuel and other saleable products are not waste tires or partial shreds; therefore, they do not need to be removed from Zones 1-4 for DHEC to return the temporary financial assurance to VIVA Moncks Corner, or its designee, pursuant to this section.

c. DHEC shall issue the payment by check within thirty (30) days from verification that all waste tires and/or partial shreds have been removed from the VIVA Moncks Corner property, or otherwise processed into tire derived fuel or other specified products within that Zone.

5. VIVA Moncks Corner agrees to complete the removal or processing of all waste tires and partial shreds to less than 81,000 PTEs at the Facility within eighteen (18) months after the day that VIVA Moncks Corner receives notice that this Order has been filed by the ALC (either via e-mail or regular mail, whichever occurs first) ("Compliance Period"). In addition, VIVA Moncks Corner agrees to remove and properly manage all miscellaneous, waste tire debris and solid waste in Zone 3 at the Facility within the Compliance Period. In addition, VIVA Moncks Corner agrees to process the waste tires in all trailers at the Facility and will ensure that the maximum quantity of waste tires at the Facility will be less than 81,000 PTEs at the end of

the Compliance Period. VIVA Moncks Corner also agrees that at the end of the Compliance Period there will be no tires in on-site trailers (including the fifteen (15) trailers currently at the Facility that can each hold up to one thousand two hundred (1,200) waste tires), and that the only tires on-site will be on the ground in permitted storage areas at the Facility. Moreover, VIVA Moncks Corner shall be in compliance with the Order, the Statute, the Regulation, and its Permit as verified by the Department, at the end of the Compliance Period. Upon verification of compliance, DHEC shall authorize VIVA Moncks Corner, in writing, that it may accept waste tires and/or used tires at the Facility. If VIVA Moncks Corner removes unprocessed waste tires or partial shreds from the Facility, it shall provide DHEC with written confirmation of: (1) the number of waste tires/volume of partial shreds removed from the Facility; and (2) the destination of the waste tires/shreds. If the partial shreds are disposed of at a landfill, VIVA Moncks Corner shall provide DHEC with a disposal receipt for the shreds.

6. VIVA Moncks Corner shall notify the Department in writing of any revisions in regulated operations or additions to the regulated equipment under its Permit after the effective date of this Agreement, and agrees not to operate the equipment until DHEC issues a letter authorizing the Permit modification.

7. VIVA Moncks Corner agrees that it shall hire a licensed exterminator to implement a monthly mosquito control program to control adult and larval mosquitoes at the Facility during the months of March through November. VIVA Moncks Corner also agrees to apply mosquito fog at least three times per week as the weather permits during the months of March through November. In addition, VIVA Moncks Corner and/or its contractor shall perform additional mosquito control, within 48 hours after receipt of the Department's written (e-mail, regular mail, or certified mail) request to perform additional control, as such request will be

pursuant to complaints received by DHEC during the Compliance Period referenced in this Order. The Department will only request additional mosquito control upon its receipt of two or more complaints (anonymous or otherwise; verbal or written) within a one week period.

8. This Order shall be binding upon and inure to the benefit of VIVA Moncks Corner and the Department. VIVA Moncks Corner may not assign any rights or obligations under this Agreement without the prior written consent of the Department. An extension may be granted for any scheduled activity delayed by an event of force majeure which shall mean any event arising from causes beyond the control of the VIVA Moncks Corner that causes a delay in or prevents the performance of any of the conditions under this Agreement including but not limited to: acts of God, fire, war, insurrection, civil disturbance, explosion; adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; restraint by court order or order of public authority; inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; and delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by representatives of VIVA Moncks Corner. Delays created as a direct result of permit appeals do not constitute non-compliance with the Consent Order.

9. Events which are not force majeure include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events (except as set forth in Paragraph 7), or failure by VIVA Moncks Corner to exercise due diligence in obtaining governmental permits or performing any other requirement of this Agreement or any procedure necessary to provide performance pursuant to the provisions of

this Consent Order. Any written notice of extension shall be granted at the discretion of the Department and shall become a fully enforceable portion of the Consent Order.

10. **IT IS FURTHER ORDERED AND AGREED** that this Order governs only the liability to the Department for civil sanctions arising from the civil matters set forth herein and constitutes the entire agreement between the Department and VIVA Moncks Corner with respect to the resolution and settlement of these civil matters. The parties are not relying upon any representations, promises, understandings or agreements except as expressly set forth within the Agreement.


11. **IT IS FURTHER ORDERED AND AGREED** that failure to meet deadlines established herein or any other violation of the provisions of this Order may be deemed a violation of the Statute. Upon ascertaining any such violation(s), the Department may initiate action to obtain compliance with this Order, the Regulation, and the Statute.

12. Upon good cause shown, any of the parties to this Settlement Agreement and Consent Order of Dismissal may move this Court to enforce compliance with the provisions of this Settlement Agreement and Consent Order of Dismissal.

13. This action is hereby dismissed without prejudice because in the event this Agreement becomes null and void due to VIVA Moncks Corner's non-compliance with this Order, upon such occurrence, DHEC will request the ALC to issue a Final Order and Decision in the above-captioned matter pursuant to ALC Rule 29, since the ALC held a hearing in this matter on September 22 and 23, 2016, with both Petitioner and Respondent given ample opportunity to present their case.

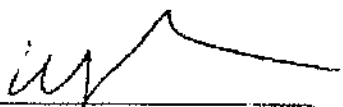

AND IT IS SO ORDERED.

April 17, 2017  
Columbia, South Carolina

  
The Honorable S. Phillip Lenski  
Administrative Law Judge

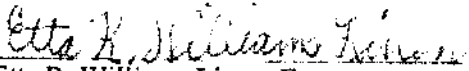


**CONSENTED AND AGREED TO BY THE PARTIES:**

  
\_\_\_\_\_  
Martin J. Sergi, Chief Executive  
VIVA Recycling of South Carolina, LLC d/b/a Moncks Corner Tire  
\_\_\_\_\_  
Steven D. Weber  
S.C. Bar No. 16917  
Parker Poe Adams & Bernstein LLP  
Three Wachovia Center  
401 S. Tryon Street, Ste. 3000  
Charlotte, North Carolina 28202

*Approved as to Form by Counsel for Petitioner VIVA Recycling of South Carolina, LLC  
d/b/a Moncks Corner Tire*

**CONSENTED AND AGREED TO BY THE PARTIES:**



Etta R. Williams Linen, Esq.

Assistant General Counsel

S.C. Bar No. 16663

Office of the General Counsel

SC Department of Health and Environmental Control

2600 Bull Street

Columbia, South Carolina 29201-1708

*On Behalf of Respondent Department of  
Health and Environmental Control*

EXHIBIT A

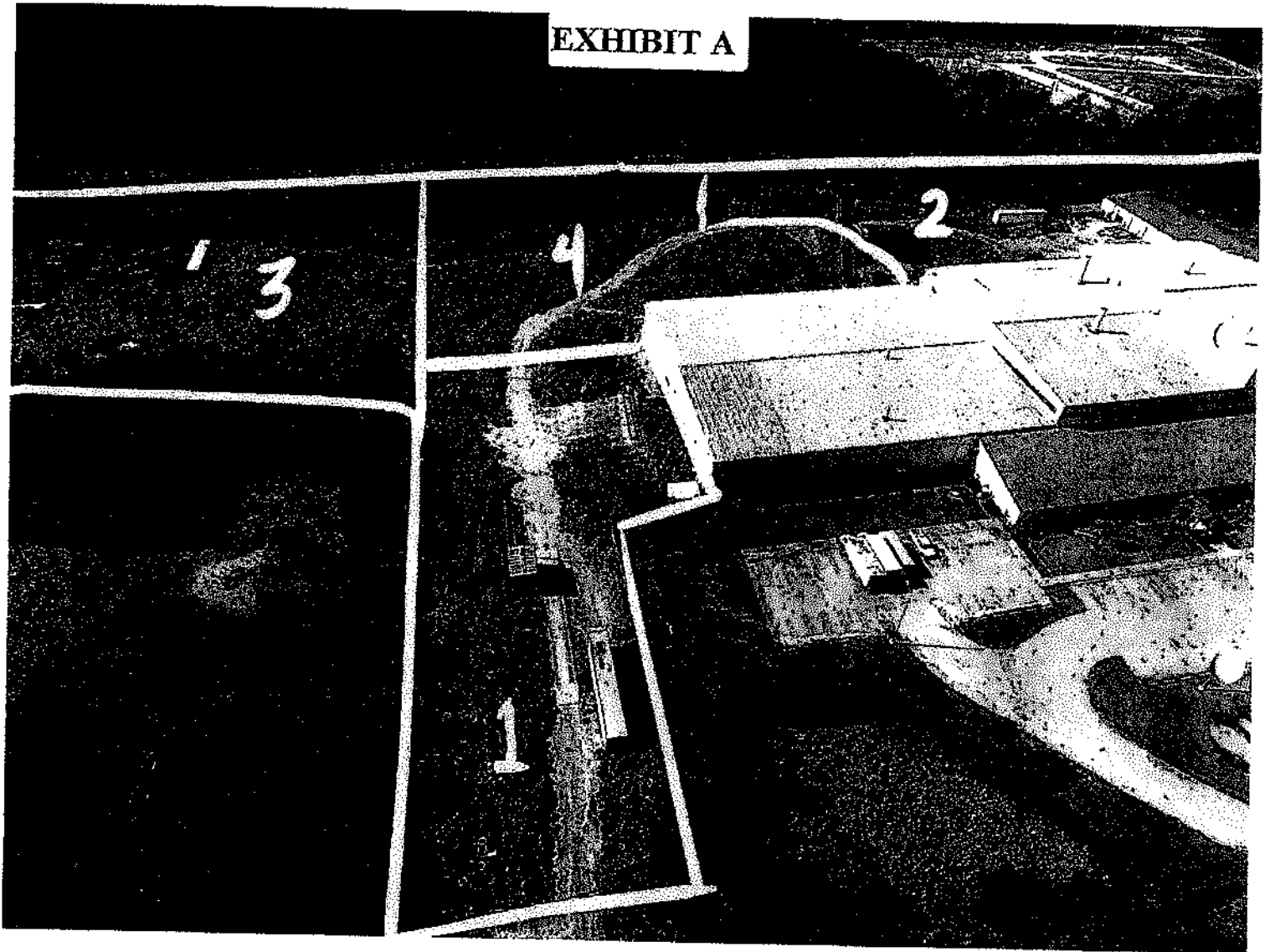


EXHIBIT A

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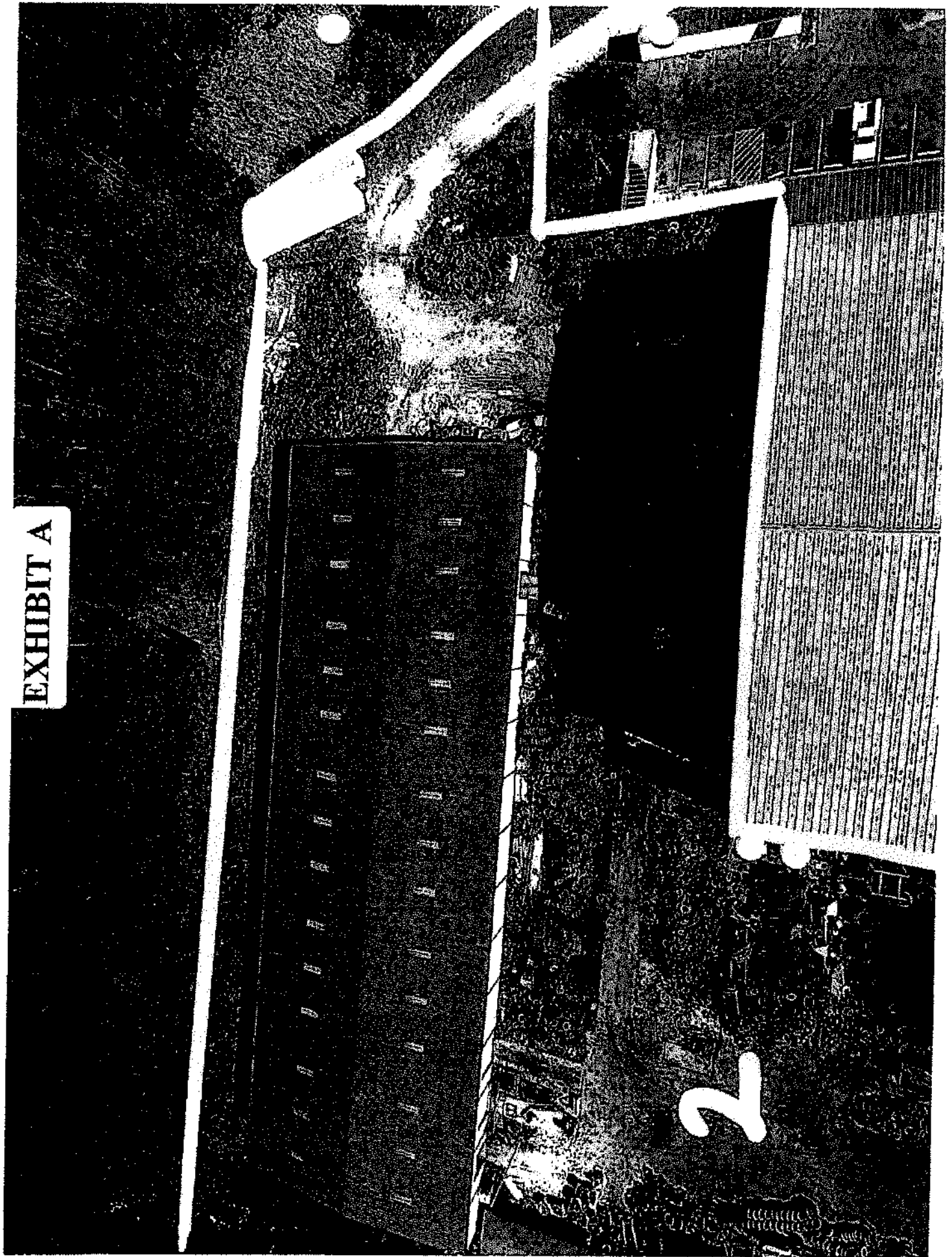


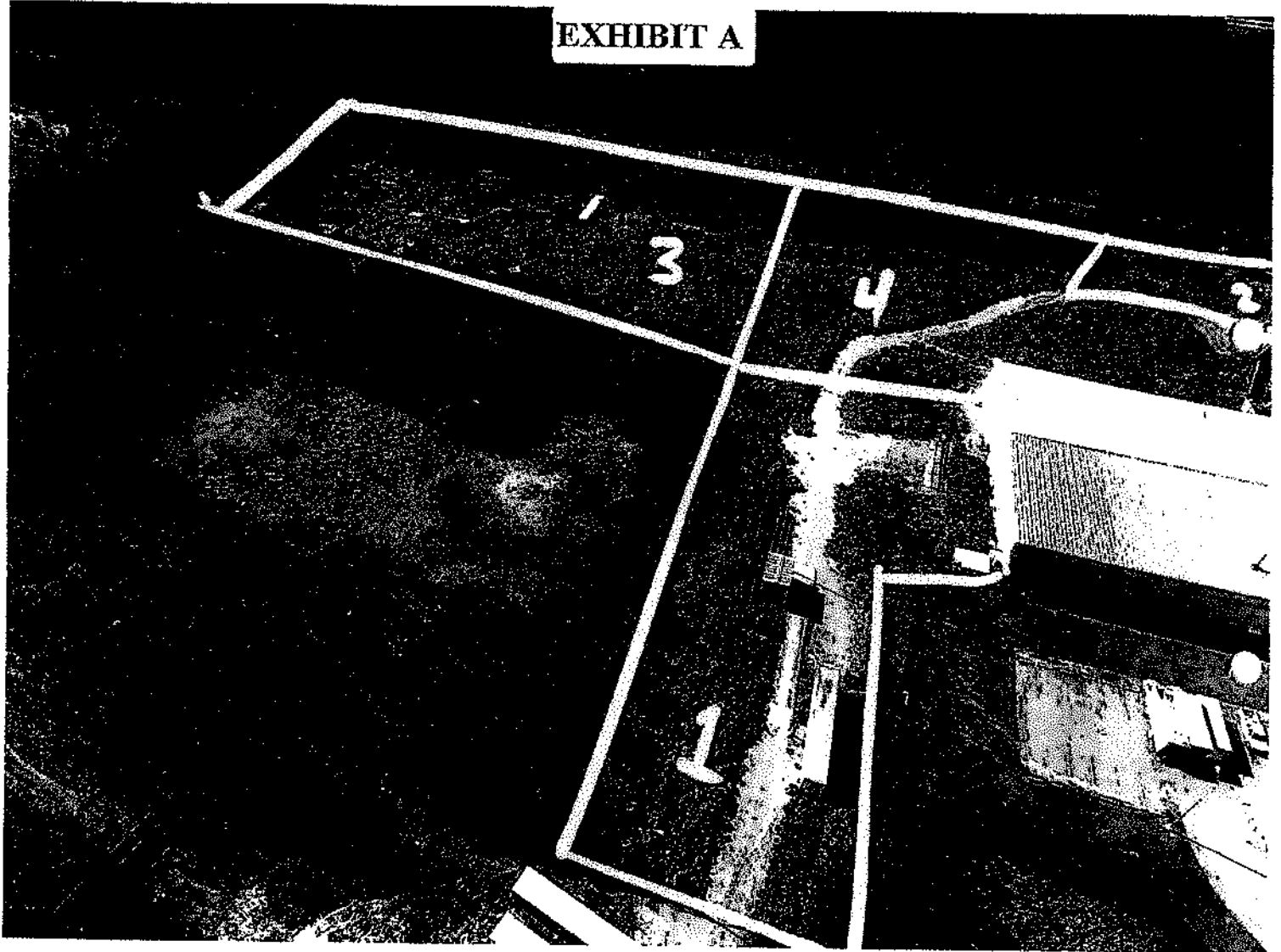


EXHIBIT A





EXHIBIT A



**CERTIFICATE OF SERVICE**

I, Edye U. Moran, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

April 17, 2017  
Columbia, South Carolina

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Edye U. Moran  
Judicial Law Clerk

APR 17 2017  
JUDICIAL LAW CLERK