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March 12, 2012

Celebrating 50 Years

Jeff Emmons, Environmental Protection Specialist
Solid Waste Compliance Assurance Unit
Solid Waste and Hazardious Waste Program
CO Department of Public Health and Environment
222 South 6th Street
Grand Junction, CO 81501
Re: Butch Gunn and Keith Maynes Compliance Advisory

Dear Mr. Emmons:

We are submitting this report to the Colorado Department of Public Health and Environment ("CDPHE") on behalf of Butch Gunn and Keith Maynes as requested by your Compliance Advisory in letters of September 16, 2011 and November 1, 2011.

This is only a partial report as the Colorado Department of Natural Resources, Division of Parks and Wildlife ("Division of Wildlife") has refused to grant Mr. Gunn and Mr. Maynes access to certain State lands to retrieve the tires from Mr. Gunn's property on those lands. According to the enclosed email, the Division of Wildlife will allow Mr. Gunn and Mr. Maynes access to these State lands to retrieve the remaining approximately 100 tires in April or May of this year. Mr. Gunn and Mr. Maynes determined to provide this partial report although access has so far been denied to demonstrate their efforts to comply with your requests. We will provide you the additional information after they obtain access to the State lands and remove the tires.

Requested Action 1a)

As you are aware, Mr. Gunn and Mr. Maynes immediately ceased delivering tires to the Gunn property and any other site not specified by 10.3.1 of the Solid Waste Regulations.

Requested Action 1b)

Mr. Gunn and Mr. Maynes removed all retrievable tires from the July 26, 2011 storm from all affected waterways including Burro Creek, Cow Creek and the Uncompahgre River by the extended deadline of December 1, 2011 except for the tires remaining on State lands.

Contrary to an article in the Ouray County Plaindealer in December 2011, Mr. Gunn and Maynes Tire did not use any heavy equipment to collect the tires out of Cow Creek or any other

waterway. They manually removed the tires and loaded them on an ATV. The work that is the subject of the article was performed by a ditch company at the confluence of their ditch and Cow Creek. Mr. Gunn and Maynes Tire were not asked to comment on the story by the reporter and just learned of the story in the last three weeks. The information in the story about their involvement is false.

Requested Action 1c)

All the tires removed from the affected waterways were taken to Maynes Tire, the retailer of origin or a registered waste tire facility. Exhibit 1 details the location of the tires removed from the waterways and provides the identity of the landowners where the tires were located. Exhibit 1 also provides the number of tires removed which totaled approximately 1000 tires. Mr. Gunn and Mr. Maynes spent approximately 500 man hours removing the tires from the waterways. They do not believe that any tires remain in the waterways except for the tires on State lands. No landowner denied access except the Division of Wildlife. Exhibit 1 also includes documentation of interim storage and ultimate disposal of all the removed tires.

Requested Action 4a) and 4b)

Your November 1, 2011 letter withdrew the requested action of Maynes Tire to register as a tire hauler and tire retailer.

Requested Action 4c)

The only remaining requested action other than removing the tires from the State lands upon the grant of access is removal of the tires remaining on the Gunn property. The Gunns have used these tires for erosion control since the 1940s and they remain buried even after the 100 year flood event on July 26, 2011. Because Ouray County is the governing body having jurisdiction, no certificate of designation was possible at any time. The tires have been beneficially reused by the Gunn's for erosion control and soil conservation since the 1940s and as such are not subject to the CDPHE Solid Waste Regulations. The new tire regulations also make it clear that the beneficial reuse of waste tires remains permitted.

This exception was specifically maintained in the new legislation as a recognition of the extensive beneficial reuse of tires in the agricultural community and was lobbied for and obtained by organizations such as the Colorado Cattlemans Association and The Farm Bureau. The federal Clean Water Act ("CWA") is consistent in exempting historical agricultural and maintenance activities from its dredge and fill prohibition.¹ See 33 U.S.C. § 1344(f).

We have engaged the engineering firm of AgriTech to provide a closure plan for the tires. AgriTech has visited the site. We also engaged the firm of Forest Management, Inc. and they also have visited the site. Although Forest Management is not an engineering firm, they have

¹ It is not clear that the federal government has jurisdiction over the draw and we have made a Freedom of Information Act request to the Army Corp of Engineers to understand their position on this issue. We have just received the documents pursuant to our request.

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completed projects of this type. Both firms are investigating closure options and AgriTech will draft the closure plan.

Finally, Exhibit 2 provides documentation that Mayne's Tire has sent the \$1.50 fee required by Colorado Statute for each new tire they sell to CDPHE.

Bertha Gunn is 89 years old. She and her late husband as well as Butch Gunn had no idea that the reuse of old tires since the 1940s for erosion control on their agricultural property would ever be considered a violation of any governmental law or regulation. They simply thought it was a way to reuse old tires in a functional way to aid their agricultural operation. This historical and current reuse of tires is widespread throughout Colorado's rural areas. The Gunn's would not have been able to obtain a certificate of designation even after 1995 when the County passed its ordinance because of the agricultural exception to the County's ordinance. At most, the law is unclear whether their action was illegal even after the ordinance came into existence. This should not be held against them in this situation.

We hope that we can work together in this matter. Thanks and please let me know your questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Voogt", written in a cursive style.

Eric J. Voogt

cc: Clients
Kathryn Sellers, Esq.
Scott Schultz, Esq.