

5. Pursuant to Ala. Code § 22-27-10(b), as amended, and ADEM Admin. Code r. 335-13-11-.03(2), any person who participates in the creation or operation of an unauthorized dump, or contributed to an unauthorized dump, shall be responsible for the removal of the waste or otherwise the closure of the unauthorized dump in accordance with this article and rules of the department. If those who created, operated, or contributed to an unauthorized dump do not remove or close the unauthorized dump, the landowner shall also be responsible for the removal or otherwise the closure of the unauthorized dump.

6. On February 20, 2018, Department personnel conducted an inspection and documented the existence of a STS/UAD located at 561 Cane Break Street in Uniontown, Perry County. A review of Perry County property records revealed Marilyn Turner Miller as the owner of the property. However, Department personnel have determined Don & Ron Enterprises is the creator and operator of the STS/UAD. The inspection and a review of Don & Ron Enterprises' compliance with certain requirements of Divisions 4 and 13 of the ADEM Admin. Code revealed the following:

(a) Pursuant to ADEM Admin. Code r. 335-4-4-.01(1), no person may accumulate more than 100 scrap tires, except a permitted processor, a person who registers as required in ADEM Admin. Code r. 335-4-3-.01(2), or a permitted SWDF [Solid Waste Disposal Facility]. No person may expose scrap tires to the elements for more than thirty days. In addition, ADEM Admin. Code r. 335-4-2-.01(2) requires the responsible party for a scrap tire site [as defined at ADEM Admin. Code r. 335-4-1-.01(uu)] to remediate the site.

As noted during the February 20, 2018, inspection and the subsequent records review, Don & Ron Enterprises had disposed of approximately 450 whole scrap tires on the aforementioned property without registering with the Department as a receiver of scrap tires or obtaining a permit as a scrap tire processor or SWDF, thereby creating an illegal scrap tire site on the aforementioned property.

(b) Pursuant to ADEM Admin. Code rs. 335-13-1-.13(1) and 335-13-5-.01, unauthorized dumps are prohibited and must be closed, and all solid waste shall be disposed of in a landfill unit permitted by the Department.

As noted during the February 20, 2018 inspection, Don & Ron Enterprises had dumped approximately 1,200 cubic yards of solid waste, including, but not limited to scrap metal, rubbish, scrap automobile parts, scrap appliances, and batteries materials, on the aforementioned property, thereby creating an open, unauthorized dump.

7. On March 14, 2018, the Department issued to Don & Ron Enterprises a Notice of Violation (hereinafter "NOV") requiring the abatement and closure of the STS/UAD and the submittal of documentation attesting to the complete remediation of the STS/UAD and the proper disposal of all regulated solid wastes.

8. The Department has not received a written response to the NOV.

9. On April 25, 2018, Department personnel conducted a follow-up inspection of the aforementioned property and observed the continued existence of the UAD and a reduction of the amount of visible scrap tires on the property.

10. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. 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: The Department has considered the general nature and magnitude of each violation and determined the violations constituted a significant deviation from the requirements applicable to solid waste disposal and scrap tire management. At this time, the Department is unaware of any irreparable harm to the environment; however, the STS/UAD may pose a threat to human health or safety of the public due to the possible presence of disease vectors.

B. THE STANDARD OF CARE: In considering the standard of care manifested by Don & Ron Enterprises, the Department noted the violations cited herein were non-technical and easily avoidable. Consequently, Don & Ron Enterprises has failed to exhibit a standard of care commensurate with the applicable regulatory standards set forth in ADEM Admin. Code div. 335-4 and 335-13.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Don & Ron Enterprises 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 attempts by Don & Ron Enterprises to mitigate potential effects upon the environment that may have been caused as a result of the STS/UAD.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Don & Ron Enterprises does not have a documented history of violations of the applicable requirements of Divisions 335-4 or 335-13 of the ADEM Administrative Code.

F. THE ABILITY TO PAY: The Department does not have any evidence indicating that Don & Ron Enterprises is unable to pay the civil penalty.

11. OTHER FACTORS: Pursuant to Ala. Code §22-40A-19(e), as amended, a fine of five dollars (\$5) per tire shall be assessed against any party who accumulates, transfers, transports, processes, or engages in unauthorized disposal of scrap tires. This fee shall be in addition to all other fines or penalties assessed. In consideration of the

aforementioned statutory requirement, the Department has enhanced the civil penalty accordingly.

12. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, as well as other factors, and has concluded that a civil penalty is appropriate for the violations cited herein (See Attachment A, which has been made part of the Department's Findings).

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), as amended, it is hereby ORDERED:

A. That, not later than forty-five days of issuance of this Order, Don & Ron Enterprises shall pay to the Department a civil penalty in the amount of \$41,250 for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment acceptable to the Department 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 Don & Ron Enterprises' 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, Don & Ron Enterprises shall cease and desist from operating any STS/UAD.

C. That, within thirty days of issuance of this Order, Don & Ron Enterprises shall submit a closure plan to the Department in accordance with ADEM Admin. Code r. 335-13-1-.13(2)(b)(1) and ADEM Admin. Code r. 335-4-2-.01(6). This plan shall include a schedule for remediation and closure completion. Don & Ron Enterprises shall

implement the closure plan and remove all scrap tires and solid waste onsite to an approved landfill unit.

D. That, within thirty days of completion of remediation activities, Don & Ron Enterprises shall document closure activities by submitting the following information to the Department:

1. Time period in which the remediation activities occurred.
2. Total volume of scrap tires and solid waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site, before, during, and after remediation.
6. Documentation that adequate sedimentation controls were employed to prevent erosion from disturbed areas resulting from the remediation activities.
7. Documentation that the site has been secured to prevent any future illegal dumping.

E. 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.

F. That, the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Don & Ron Enterprises for the violations cited herein.

G. That, failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Don & Ron

Enterprises for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, 2019.

Lance R. LeFleur
Director

Attachment A

Don & Ron Enterprises, Inc.
 Cane Break Street Unauthorized Scrap Tire Site/ Solid Waste Dump
 Uniontown, Perry County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Creation of an Unauthorized Dump	1	\$20,000	\$5,000	\$0	
Creation of an unauthorized Scrap Tire Site	1	\$10,000	\$4,000	\$0	Total of Three Factors
TOTAL PER FACTOR		\$30,000	\$9,000	\$0	\$39,000

Adjustments to Amount of Initial Penalty*	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$2,250 ¹
	\$2,250

Economic Benefit (+)*	\$0
Amount of Initial Penalty	\$39,000
Total Adjustments (+/-)	\$2,250
FINAL PENALTY	\$41,250

Footnotes

1. Additive fine of five dollars (\$5) per tire

* See the "FINDINGS" portion of the Order for a detailed description of each violation and the penalty factors.