

IN THE MATTER OF:

****Proposed****
ADMINISTRATIVE
ORDER NO: 19-____-AP

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-17, *as amended*, the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, *as amended*, the Alabama Department of Environmental Management (hereinafter, the “Department” or “ADEM”) Administrative Code of Regulations (hereinafter, “ADEM Admin. Code R.”) promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended, the Department makes the following FINDINGS:

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4. ADEM Admin. Code r. 335-3-3-.01(2)(b)1 states that "...open burning must take place on the property on which the combustible fuel originates."

5. ADEM Admin. Code r. 335-3-3-.01(2)(b)2 states that "the location of the burning must be at least 500 feet from the nearest occupied dwelling other than a dwelling located on the property on which the burning is conducted."

6. ADEM Admin. Code r. 335-3-3-.01(2)(b)7 states that "the fire shall be attended at all times."

7. ADEM Admin. Code r. 335-3-3-.01(2)(d) states that "Permission to open burn under the provisions of this paragraph is revoked during the months of May, June, July, August, September, and October in Baldwin, DeKalb, Etowah, Jefferson, Lawrence, Madison, Mobile, Montgomery, Morgan, Shelby, Russell, and Talladega Counties."

8. On March 28, 2019, the Department was informed by a Baldwin County Solid Waste Officer that unauthorized open burning of imported vegetation was being conducted by Hale on property located at 55555 Hale Road in Stockton, Baldwin County (hereinafter, the "Site"). The Solid Waste Officer informed Hale via phone that burning imported vegetation is a violation of the Department's Open Burning Regulations. A copy of the open burning regulations were left on Site.

9. On April 1, 2019, the Department received a complaint of unauthorized open burning being conducted at the Site.

10. On April 9, 2019, Department personnel conducted an investigation of the Site and observed unauthorized open burning of imported vegetation being conducted at the Site.

11. On May 1, 2019, Department personnel conducted a complaint investigation of the Site and observed an unattended smoking pile of imported vegetation.

This burning was being conducted during the Burn Ban. The Department Inspector left a copy of the open burning regulations on Site.

12. 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 \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Hale continued conducting unauthorized open burning of imported vegetation at the Site after being advised to cease such activities by a Baldwin County Solid Waste Officer and Department personnel. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Hale to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01(2)(b)1, 335-3-3-.01(2)(b)2, 335-3-3-.01(2)(b)7, and 335-3-3-.01(2)(d).

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Hale likely derived economic benefit by not legally disposing of imported vegetation.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Hale to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Hale has no known prior history with the Department for violating the open burning regulations.

F. THE ABILITY TO PAY: Hale has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and has concluded that a civil penalty herein is appropriate (*See* "Attachment A", which is hereby incorporated into these Findings).

ORDER

Based upon the foregoing FINDINGS and pursuant to Ala. Code §§22-22A-5(10), 22-22A-5(12), 22-22-5(18), and 22-28-18, *as amended*, it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Hale shall pay to the Department a civil penalty in the amount of \$7,500.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environment Management by certified or cashier's check and shall be submitted to:

Office of General Counsel
Alabama Department of
Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That, immediately upon receipt of this Order and continuing thereafter, Hale shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-3-.01(2)(b)1, 335-3-3-.01(2)(b)2, 335-3-3-.01(2)(b)7, and 335-3-3-.01(2)(d).

C. 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.

D. Except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve Hale of his obligations to comply in the future with any permit or other written direction from the Department.

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

F. That, failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against Hale 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
Alabama Department of Environmental
Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

CERTIFICATE OF SERVICE

I, Ronald W. Gore, do hereby certify that I have served this Proposed Administrative Order upon the person(s) listed below by sending the same, postage paid, through the United States Mail **91 7199 9991 7030 3272 4844** with instructions to forward and return receipt, to:

Andrew Hale
55500 Hale Road
Stockton, Alabama 36579

DONE this the 25th day of June 2019.



Ronald W. Gore
Chief - Air Division
Alabama Department of
Environmental Management

ATTACHMENT A

Andrew Hale
Stockton, Baldwin County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Illegal open burning	2	\$3,000	\$3,000	\$0	
					Total of Three Factors
TOTAL PER FACTOR		\$3,000	\$3,000	\$0	\$6,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) Enter at Right	\$0

Economic Benefit (+)	\$1,500
Amount of Initial Penalty	\$7,500
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$7,500.00

Footnotes

* See the "Department's Findings" portion of the Order for a detailed description of each violation and the penalty factors.