

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)
)
Bob Dudley Lumber, LLC)
Hatchechubbee, Russell County, Alabama)
)
_____)

CONSENT ORDER NO. DRAFT

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department” or “ADEM”) and Dudley Hardwoods, LLC, 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*, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Bob Dudley Lumber, LLC (“Dudley”) owns and operates a hardwood sawmill (the “Facility”), which was formerly a wood preservation facility known as Walker-Williams Lumber Company, located at 687 Alabama Highway 26 near the Town of Hatchechubbee, Russell County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-17, *as amended*.
3. Pursuant to Ala. Code §§ 22-22A-4(n), *as amended*, the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, *as amended*. In addition, the Department is authorized to administer and enforce the provisions of

the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23, *as amended*.

4. ADEM Admin. Code r. 335-3-3-.01 requires that no person shall ignite, cause to be ignited, permitted to be ignited, or maintain any open fire at any time unless it is for one of several approved reasons listed in ADEM Admin. Code r. 335-3-3-.01.

5. ADEM Admin. Code r. 335-3-11-.01 incorporates by reference 40 CFR 61

DEPARTMENT'S CONTENTIONS

6. On August 18, 2020, the Department discovered unauthorized open burning being conducted at the Facility, made contact with the Facility general manager, and instructed him to extinguish the open burning.

7. On August 18, 2020, the Department contacted the Facility general manager again via phone call for additional information and he stated that the fire was started without his knowledge and that the material being burned was process wood waste.

8. 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: Unauthorized open burning causes the following:

(1) Emissions of fine particulate matter (PM_{2.5}) pollutants.

(2) Emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_x) pollutants, which are precursors for the formation of ground-level ozone.

(3) Emissions of air pollutants that negatively affect an area's ability to comply with the National Ambient Air Quality Standard (NAAQS) for PM_{2.5} and Ozone.

Therefore, the Department considers Dudley's unauthorized open burning to be a serious violation.

B. THE STANDARD OF CARE: Dudley did not exhibit the required standard of care by allowing unauthorized open burning to be conducted at the Facility.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any economic benefit that may have accrued to Dudley as a result of the alleged violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any environmental effects to mitigate as a result of the alleged violation.

E. HISTORY OF PREVIOUS VIOLATIONS: Dudley was issued a Consent Order with penalty on June 9, 2016, for unauthorized open burning, lack of an asbestos inspection, and lack of notification of demolition.

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

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

9. 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, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (*See* "Attachment A", which is made a part of the Department's Contentions).

10. The Department neither admits nor denies Dudley's Contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

DUDLEY'S CONTENTIONS

11. Dudley neither admits nor denies the Department's contentions. Dudley consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, Dudley, along with the Department, desires to resolve and settle the

compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six 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 determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Dudley agree to enter into this ORDER with the following terms and conditions:

A. Dudley agrees to pay to the Department a civil penalty in the amount of \$7,500.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Dudley agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

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

C. Dudley agrees to remove and properly dispose of the ash and any unburned material associated with the burn pile within thirty days of the effective date of this Consent Order.

D. Dudley agrees to comply with all requirements of ADEM Administrative Code div. 335-3 immediately upon the effective date of this Consent Order and continuing every day thereafter.

E. The parties agree that this Consent Order shall apply to and be binding upon both

parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. The parties agree that this Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. Dudley agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, Dudley agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Dudley also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Dudley shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Dudley, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Dudley) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons

(including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Dudley, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The Department and Dudley agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Dudley shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

J. The Department and Dudley agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Dudley does hereby waive any hearing on the terms and conditions of same.

K. The Department and Dudley agree that this Order shall not affect Dudley's obligation to comply with any Federal, State, or local laws or regulations.

L. The Department and Dudley agree that final approval and entry into this Order are

subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

M. The Department and Dudley agree 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.

N. The Department and Dudley agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The Department and Dudley agree that, 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 Dudley of its obligations to comply in the future with any permit.

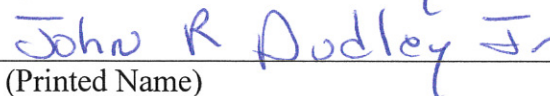
Executed in duplicate, with each part being an original.

DUDLEY HARDWOODS, LLC

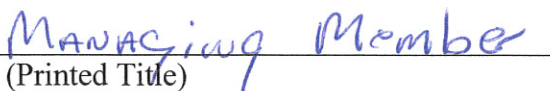
**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**



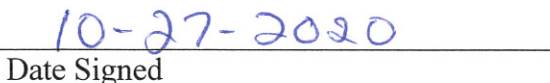
(Signature of Authorized Representative)



(Printed Name)



(Printed Title)



Date Signed

Lance R. LeFleur
Director

Date Executed

Attachment A

**Dudley Hardwoods, LLC
Hatchechubbee, Russell County**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized Open Burning	1	\$2,500	\$2,500	\$2,500	
					Total of Three Factors
TOTAL PER FACTOR		\$2,500	\$2,500	\$2,500	\$7,500

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

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

Footnotes

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