

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )

National Salvage & Service Corporation )  
Selma, Dallas County, Alabama )

PROPOSED  
ADMINISTRATIVE  
ORDER NO: 22-XXX-AP

FINDINGS

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 (“Department” or “ADEM”) Administrative Code of Regulations (“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:

1. National Salvage & Service Corporation (“National”) is a wholesale provider of used railroad ties and new railroad ties, which operates Selma Grinding and Sorting Operations on property located at 12170 River Road in Selma, Dallas County, Alabama (the “Site”).

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(2)(b)4 states that “Only vegetation and untreated wood may be burned. It is unauthorized to open burn heavy oils, asphalt products, plastics, vinyl materials, insulation, paper, cardboard, natural or synthetic rubber, salvage or scrap materials, chemicals, garbage, treated or painted wood, or any trash

5. On August 2, 2021, the Department was notified by the National Response Center (NRC) of a large railroad tire fire occurring at the Site. The NRC Report stated that 1.2 million railroad ties were on fire.

6. On August 10, 2021, Department personnel conducted an investigation of the Site and observed approximately thirty-six acres of smoldering and smoking materials. National personnel informed the Department that approximately 2.1 million railroad ties were on-Site at the time the fire occurred.

7. On August 26, 2021, the Department sent a letter to National requesting a response to questions regarding the fire.

8. On September 20, 2021, National responded, stating in part, that the smoldering materials were fully extinguished on September 10, 2021 and that approximately 2,130,000 crossties were destroyed in the fire.

9. 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 violations, 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

violations 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: National failed to prevent unauthorized open burning of at least 150,000 tons of material. The Department considers this violation to be serious.

B. THE STANDARD OF CARE: There appeared a significant lack of care by National to comply with the applicable requirements of the ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)4. In the response to the Department's inquiries, National stated that it previously grouped crossties into 10,000 and spaced each group approximately 300 hundred feet apart. Due to increased inventories, the preventative measures were not maintained and fire lane spacing was inadequate.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: National likely did not derive an economic benefit due to the unauthorized open burning.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There appeared to be limited efforts by National to mitigate possible effects of this violation upon the environment at the time of the violation.

E. HISTORY OF PREVIOUS VIOLATIONS: National has no previous history with the Department for violating the Open Burning Regulations.

F. THE ABILITY TO PAY: National 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, National shall pay to the Department a civil penalty in the amount of \$75,000.00 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, National shall ensure immediate and future compliance with ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)4.

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

ORDERED and ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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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 **9489 0090 0027 6286 8094 87** with instructions to forward and return receipt, to:

National Salvage & Service Corporation  
Attention: Mr. Timothy Rushing  
6755 Old State Road 37 S  
Bloomington, Indiana 47401

DONE this the 20<sup>th</sup> day of December, 2021.



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

## ATTACHMENT A

### National Salvage & Service Corporation Selma, Dallas County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	3	\$15,000	\$60,000	\$0	
					<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<b>\$15,000</b>	<b>\$60,000</b>	<b>\$0</b>	<b>\$75,000</b>

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

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$75,000
Total Adjustments (+/-)	\$0
<b>FINAL PENALTY</b>	<b>\$75,000.00</b>

#### Footnotes

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