

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: \_\_\_\_\_ )

Scott's Mobile Homes, LLC )  
Flat Rock, Jackson 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. Scott's Mobile Homes, LLC ("Owner") is the owner of a Mobile Home Community company operating on property at 2468 AL Highway 75, Flat Rock, Jackson County, Alabama ("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)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. On August 6, 2021, the Department received a complaint of open burning taking place at Site.

7. On August 13, 2021, Department personnel conducted an investigation of the Site. The investigation determined unauthorized open burning of wood, metal, and plastic had been conducted at the Site, in violation of ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)2.

8. On August 23, 2021, the Department issued a Notice of Violation (NOV) to Owner requesting that they submit a written response regarding the unauthorized open burning.

9. On August 26, 2021, the NOV was delivered based on USPS Tracking information. The Department has not received a response to the NOV from Owner.

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 \$25,000.00 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: Owner conducted unauthorized open burning at the Site and the Department considers this violation to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Owner 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)2.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Owner likely derived economic benefit by not properly disposing of debris.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts taken by Owner to mitigate possible effects of this violation upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The named entity as Owner does not have a history of violations with the Department for unauthorized open burning.

F. THE ABILITY TO PAY: Owner 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, Owner shall pay to the Department a civil penalty in the amount of \$5,000.00 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, Owner 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)2.

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 Owner 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 Owner 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 Owner 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 8093 26** with instructions to forward and return receipt, to:

Mr. Terry Scott  
Scott's Mobile Homes, LLC  
2468 Alabama Highway 75  
Flat Rock, Alabama 35966

DONE this the 14th day of December, 2021.



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



## ATTACHMENT A

**Scott's Mobile Homes, LLC**  
**Jackson County, Alabama**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>	
Unauthorized open burning	1	\$2,500	\$1,500	\$	
					<b>Total of Three Factors</b>
<b><i>TOTAL PER FACTOR</i></b>		<b><i>\$2,500</i></b>	<b><i>\$1,500</i></b>	<b><i>\$</i></b>	<b><i>\$4,000</i></b>

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

<b>Economic Benefit (+)</b>	<b>\$1,000</b>
<b>Amount of Initial Penalty</b>	<b>\$5,000</b>
<b>Total Adjustments (+/-)</b>	<b>\$0</b>
<b>FINAL PENALTY</b>	<b>\$5,000.00</b>

### Footnotes

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