

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

\_\_\_\_\_) )  
IN THE MATTER OF: ) )  
 ) )  
**Durward E. and Jimmy Cagle** ) )  
**360 Old McVile Road UAD** ) )  
**Crossville, Marshall County, Alabama** ) )  
\_\_\_\_\_)

Order No. 22-XXX-SW

**FINDINGS**

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended; the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18, as amended; and the Alabama Department of Environmental Management’s (hereinafter “ADEM” or “the Department”) Administrative Code of Regulations (hereinafter “ADEM Admin. Code r.”) promulgated pursuant thereto, the Department makes the following FINDINGS:

1. Durward E. and Jimmy Cagle (hereinafter “the Cagles”), owners of the real property with Parcel Nos. 17-08-28-0-000-020.001 and 17-08-28-0-000-019.000 located at 360 Old McVile Road in Crossville, Marshall County, Alabama (hereinafter “the Site”), are responsible for the creation of an unauthorized solid waste dump (hereinafter “UAD”) on the Site, which is the subject of this Administrative Order.
2. Pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Department is a duly constituted department of the State of Alabama.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, and Ala. Code § 22-27-9(a), as amended, the Department is the state agency authorized to administer and enforce the provisions of the SWRMMA, Ala. Code §§ 22-27-1 to 22-27-18, as amended.
4. 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.

5. On August 12, 2019, in response to a complaint, Department personnel conducted an initial site inspection and discovered an unpermitted disposal area of household waste, appliances, scrap metal and approximately 50 scrap tires. The Cagles were found to be the Site's owners after a check of the Marshall County property records.

6. On August 29, 2019, a Notice of Violation (NOV) was issued to the Cagles for the aforementioned UAD via the United States Postal Service (USPS) Certified Mail.

7. The delivery of the August 29, 2019 NOV could not be confirmed, and the Department received no response to the NOV.

8. On August 26, 2021, in response to a second complaint, Department personnel conducted a follow-up site inspection and observed the continued presence of the UAD. The inspection and a review of the Cagles' compliance with certain requirements of Division 13 of the ADEM Admin. Code revealed the following:

Pursuant to ADEM Admin. Code rs. 335-13-1-.13(1)(a) and (2), unauthorized dumps are prohibited and must be closed in a manner determined to be necessary by the Department.

During the inspection, it was discovered that regulated solid waste continued to exist at the Site. In comparison to the initial inspection conducted on August 12, 2019, the UAD was determined to consist of about 1,000 cubic yards of household waste and construction or demolition debris, which had been placed on the Site without a Department-issued municipal solid waste facility disposal permit. As a result of the aforementioned solid waste being dumped on the Site, the Cagles, as the property owners, are responsible for the creation and operation of a UAD.

9. On September 27, 2021, a NOV was sent to the Cagles through USPS Certified Mail for the aforementioned UAD.

10. On October 21, 2021, the NOV was returned to the Department unclaimed.

11. On October 15, 2021, the NOV was re-sent via FedEx, with a signature required.

12. On October 19, 2021, the NOV was delivered by FedEx and J. Cagle signed for it.

13. The Department has not received a response to the NOV.

14. On April 13, 2022, Department personnel re-inspected the Site and confirmed the UAD's ongoing existence. Furthermore, the UAD appeared to be unabated.

15. 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 creation, contribution to, or operation of a UAD is inherently a public nuisance and a threat to public health. The Department is not aware of any immediate threat to the public's safety or any irreparable harm to the environment as a result of this violation with reference to the UAD located on the Site.

B. THE STANDARD OF CARE: The Cagles failed to comply with both departmental directives on the correct abatement and closing of the UAD as well as the regulations governing the disposal of solid waste after being informed of their obligations.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department was unable to establish whether the Cagles had received a significant financial benefit as a result of the violation cited herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts made by the Cagles to mitigate any possible adverse effects of the UAD on the environment or human health.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of departmental records, the Cagles do not have a documented history of prior violations of ADEM Admin. Code Div. 335-13.

F. THE ABILITY TO PAY: The Cagles have not provided the Department with any documentation demonstrating their financial inability to pay the civil penalty assessed herein.

16. 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 violation cited herein (see Attachment A, which is made a 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), 22-27-4(b), 22-27-7, and 22-27-11, as amended, it is hereby ORDERED:

A. That, not later than forty-five days of issuance of this Order, the Cagles shall pay to the Department a civil penalty in the amount of \$6,000 for the violation 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 payments shall reference the Cagles' names and addresses and the ADEM Administrative Order number of this action.

B. That, immediately upon issuance of this Order and continuing each and every day thereafter, the Cagles shall cease and desist from operating any UADs.

C. That, within thirty days of issuance of this Order, the Cagles shall submit a site closure plan to the Department in accordance with ADEM Admin. Code r. 335-13-1-.13(2)(b)1. This plan shall include a schedule for site closure completion. The Cagles shall implement the site closure plan and transport the waste to a permitted municipal solid waste (MSW) landfill.

D. That, within thirty days of completion of remediation activities, the Cagles are required to report the following information to the Department in order to provide documentation of closure actions:

1. Time period in which the remediation activities took place.
2. Total volume of waste removed from the Site.
3. Documentation that all regulated solid waste, to include both surface and subsurface waste, was removed from the Site.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted MSW landfill.
5. Photographs of the solid waste disposal area(s) on the Site, before and after remediation.

6. Documentation that the Site was properly closed to prevent erosion, if applicable.

7. Documentation that the Site has been secured to prevent any future illegal dumping, if applicable.

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 the Cagles for the violation 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 the Cagles for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Lance R. LeFleur  
Director

**Attachment A**

Durward E. and Jimmy Cagle  
 Unauthorized Solid Waste Dump  
 Crossville, Marshall County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Responsible for or creation of an Unauthorized Dump	1	\$5,000	\$1,000	\$0	Total of Three Factors
TOTAL PER FACTOR		\$5,000	\$1,000	\$0	\$6,000

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

Economic Benefit (+)*	\$0
Amount of Initial Penalty	\$6,000
Total Adjustments (+/-)	\$0
<b>FINAL PENALTY</b>	<b>\$6,000</b>

Footnotes

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