

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)
)
)
Tracy L. Moton)
35th Avenue NE UAD)
Tuscaloosa, Tuscaloosa County, Alabama)
_____)

Order No. 21 -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. Mr. Tracy L. Moton (hereinafter “Mr. Moton”) is the owner of the real property located at 2507 35th Avenue NE in Tuscaloosa, Tuscaloosa County, Alabama (parcel 63-30-02-04-3-005-032.000 (hereinafter “the Site”)) and is responsible for the creation of an unauthorized solid waste dump (hereinafter “UAD”) at the Site and the adjacent real property located at 2505 35th Avenue NE in Tuscaloosa, Alabama (parcel 63-30-02-04-3-005-033.000), 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 September 2, 2020, pursuant to a complaint, Department personnel conducted a site inspection and observed the presence of a UAD. A review of Tuscaloosa County property records revealed Mr. Moton as the owner of the aforementioned Site. The inspection and a review of Mr. Moton's 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.

On September 2, 2020, Department personnel observed approximately 200 cubic yards of construction and demolition waste, pallets, carpet, rubbish, appliances, and scrap metal disposed at the Site and on the adjacent property without a permit from the Department; thereby, constituting the creation of a UAD. The Department has determined that Mr. Moton is responsible for the UAD.

6. On September 10, 2020, the Department issued to Mr. Moton a Notice of Violation (hereinafter "NOV") requiring the abatement and closure of the UAD.

7. On September 18, 2020, the NOV was delivered via the United States Postal Service Certified Mail to the residence of Mr. Moton.

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

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 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 a public nuisance per se and a menace to public health. With regards to the UAD located at the Site, the Department is unaware of any irreparable harm to the environment, or any immediate threat to human health or to the safety of the public as a result of this violation.

B. THE STANDARD OF CARE: Mr. Moton failed to abide by requirements applicable to the disposal of solid wastes and failed to comply with directives from the Department regarding the proper abatement and closure of the UAD.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Mr. Moton has realized a significant economic 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 unaware of any efforts by Mr. Moton to mitigate any potential effects upon the environment and human health that may have been caused as a result of the UAD.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Mr. Moton does not have a documented history of violations of the applicable requirements of Division 13 of the ADEM Administrative Code.

F. THE ABILITY TO PAY: The Department does not have any evidence indicating Mr. Moton is unable to pay the civil penalty.

10. 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, Mr. Moton 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 Mr. Moton's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon issuance of this Order and continuing each and every day thereafter, Mr. Moton shall cease and desist from operating a UAD.

C. That, within thirty days of issuance of this Order, Mr. Moton 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. Mr. Moton shall implement the site closure plan, remove and properly dispose all solid waste materials into a permitted landfill unit and comply with all applicable requirements of Division 13 of the ADEM Administrative Code.

D. That, within fifteen days of completion of remediation activities, Mr. Moton shall document closure activities by submitting the following information to the Department:

1. Time period in which the remediation activities occurred.
2. Total volume of waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site, before and after remediation.
6. Documentation that the site was properly closed to prevent erosion.
7. Documentation that the site has been secured to prevent any future illegal dumping.

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 Mr. Moton 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 Mr. Moton for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2021.

Lance R. LeFleur
Director

Attachment A

Tracy Moton
 35th Avenue NE Unauthorized Solid Waste Dump
 Tuscaloosa, Tuscaloosa County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
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
FINAL PENALTY	\$6,000

Footnotes

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