

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )  
 )  
Jacob Dutton )  
2501 County Road 101 )  
Moulton, Lawrence County, Alabama )

\*\*\*\*Proposed\*\*\*\*  
ADMINISTRATIVE  
ORDER NO: 16-\_\_\_\_\_ AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), the Alabama Department of Environmental Management (hereinafter, the “Department” and/or “ADEM”) Administrative Code of Regulations (hereinafter, “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. Jacob Dutton (hereinafter, “Dutton”) operates Lawrence Wood Products, LLC from Moulton in Lawrence County and in Decatur, Morgan 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-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), 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 (2006 Rplc. Vol.).
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)4 states: “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;”

6. On October 16, 2015, the Decatur Fire Department requested ADEM representatives to be present at an ongoing fire in an old limestone quarry located in or near Decatur. ADEM noted that the burn area included the remains of wooden pallets, nails, metal items and unidentifiable debris. Additionally, the identifiable remains included an eighteen-wheel flat-bed trailer that had been loaded with pallets, which were ignited from the main fire. During the incident, a Lawrence Wood Products LLC truck driver was interviewed and stated that he had been delivering pallets to the quarry for approximately two years to be disposed of by being burned.

7. On November 3, 2015, the Department issued Dutton a Notice of Violation (NOV) for the open burning of pallets at the limestone quarry located near Decatur.

8. On November 19, 2015, the Department received a response to the NOV from Dutton that indicated that the burning has been ongoing for approximately two years and Dutton has been paying the landowner \$500.00 per month to be allowed to burn the pallets on the property. This violates ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)4.

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 \$25,000.00 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: Dutton has illegally open burn pallets at the abandoned quarry for at least two years. The Department considers this violation to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Dutton 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.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Dutton received some economic benefit from illegal burning, due his avoidance of paying tipping fees to a landfill. ADEM has made an estimate of this amount.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Dutton to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Dutton has been violating the Alabama Open Burning Regulations since at least 2014.

F. THE ABILITY TO PAY: Dutton 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 (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Dutton shall pay to the Department a civil penalty in the amount of \$800.00 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, Dutton shall ensure immediate and future compliance with this Order by ceasing open burning, in violation of 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 Dutton 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 Dutton 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 Dutton for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_ day of \_\_\_\_\_, 2016.

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Lance R. LeFleur, Director  
Alabama Department of Environmental Management  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2059  
(334) 271-7700

PROPOSED ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Ronald W. Gore, do hereby certify that I have served this Proposed Administrative Order upon the Person listed below by sending the same, postage paid, through the United States Mail 91 7199 9991 7030 3343 7842 with instructions to forward and return receipt, to:

Jacob Dutton  
2501 County Road 101  
Moulton, Alabama, 35650-6763

DONE this the 16 day of February, 2016.

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

## ATTACHMENT A

**Jacob Dutton  
Decatur, Morgan County, Alabama**

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Burning of Pallets	1	\$400		0
				0
				0
				0
<b>Totals</b>		\$400		

**Economic Benefit**      \$400

**Mitigating Factors**

**Ability to Pay**

**Other Factors**

**Civil Penalty**                  
**\$800.00**

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