

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGAMANET**

IN THE MATTER OF:)

Joseph and Sharyon Ramsey)
Fairview Road UAD and Open Burn Site)
Gadsden, Etowah County, Alabama)

) CONSENT ORDER NO. 20-XXX-SW/AP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and Joseph and Sharyon Ramsey (hereinafter “Mr. and Mrs. Ramsey”) 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 regulations promulgated pursuant thereto.

STIPULATIONS

1. Mr. and Mrs. Ramsey are responsible for the unauthorized solid waste dump (hereinafter “UAD”) and the illegal open burning of regulated solid waste contained within the UAD located at 3883 Fairview Road, Parcel ID 10-05-16-0-001-011.000, in Gadsden, Etowah County, Alabama (hereinafter “the Site”), which is the subject of this Consent 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.

DEPARTMENT'S CONTENTIONS

5. On August 14, 2018, Department personnel conducted an initial site inspection and observed the presence of an UAD. A review of Gadsden County property records revealed Mr. and Mrs. Ramsey as the owners of the aforementioned Site. However, Mr. and Mrs. Ramsey were not residing on the Site at the time of inspection. The inspection and a review of Mr. and Mrs. Ramsey's compliance with certain requirements of Division 3 and 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, Department personnel observed approximately 750 cubic yards of regulated solid waste (namely, construction/demolition waste) disposed on the Site. A review of departmental records revealed that the Department had not issued a landfill permit for the Site. Based on these facts, the Department determined that the dumping of regulated solid waste at the Site constituted the creation of an UAD and that Mr. and Mrs. Ramsey are responsible for the UAD.

6. On August 22, 2018, the Department issued to Mr. and Mrs. Ramsey a Notice of Violation (hereinafter "NOV") requiring the abatement and closure of the UAD. In addition, the NOV advised Mr. and Mrs. Ramsey of the Department's rules regarding open burning.

7. On August 28, 2018, the NOV was delivered to the Ramsey residence.

8. On August 28, 2018, Mr. and Mrs. Ramsey called to discuss a site closure plan. During the conversation, Mr. Ramsey was advised of the Department's rules regarding the open burning of regulated and unregulated waste.

9. On August 29, 2018, the Department received a response to the NOV.

10. On October 2, 2018, Mr. and Mrs. Ramsey submitted disposal receipts and pictures to the Department from the remediation of the site.

11. 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."

12. 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."

13. On November 20, 2018, Department personnel conducted a post-remediation site inspection of the Site to verify that all cleanup activities had been completed. At the time of inspection, most of the regulated materials originally observed during the August 14, 2018, inspection appeared to have been removed. However, Department personnel observed that the remaining unregulated tree waste and regulated solid waste had been burned on-site. Because the waste had been burned, the Department was unable to determine if the UAD had been fully remediated. The unauthorized burning of regulated solid waste was in violation with the requirements applicable to open burning set forth in ADEM Admin. Code r. 335-3-3-.01.

14. On April 2, 2019, the Department issued to Mr. and Mrs. Ramsey via FedEx a Proposed Administrative Order (hereinafter "PAO") requiring the abatement of the UAD, to cease the burning of regulated waste, and to pay a penalty in the amount of \$40,000.

15. The PAO was delivered to the Ramsey residence.

16. On May 6, 2019, Mr. Ramsey contacted the Department to request an informal show cause meeting to discuss the PAO.

17. On May 24, 2019, an informal settlement meeting was held at the ADEM Montgomery offices between Mr. Ramsey and Department representatives.

18. On June 6, 2019, the Department received disposal receipts and photographs for some of the waste on site as proof of disposal.

19. On June 11, 2019, the Department received a written response to the PAO from Mr. Ramsey.

20. 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 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, any immediate threat to human health, or the safety of the public as a result of this violation.

B. THE STANDARD OF CARE: Mr. and Mrs. Ramsey 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. and Mrs. Ramsey 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. and Mrs. Ramsey 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. and Mrs. Ramsey do not have a documented history of violations of the applicable requirements of Division 13 of the ADEM Admin. Code.

F. THE ABILITY TO PAY: The Department does not have any official evidence indicating that Mr. and Mrs. Ramsey is unable to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

21. The Department neither admits nor denies Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

MR. AND MRS. RAMSEY'S CONTENTIONS

22. [RESERVED for Mr. and Mrs. Ramsey's comments]

23. Mr. and Mrs. Ramsey neither admits nor denies the Department's contentions. Mr. and Mrs. Ramsey consents to abide by the terms of this Consent Order.

ORDER

THEREFORE, Mr. and Mrs. Ramsey, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six 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 determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Mr. and Mrs. Ramsey agree to enter into this Consent Order with the following terms and conditions:

A. The Department has determined that a civil penalty is appropriate for the violations cited herein. Mr. and Mrs. Ramsey shall pay to the Department a civil penalty in the amount of \$5,000 for the violations cited herein. That Mr. and Mrs. Ramsey shall pay to the Department the civil penalty assessed herein twelve (12) monthly installment payments as set forth in the scheduled below as follows:

Payment Number	Amount	Due Date
#1	\$600.00	June 10, 2020
#2	\$400.00	July 10, 2020
#3	\$400.00	August 10, 2020
#4	\$400.00	September 10, 2020
#5	\$400.00	October 10, 2020
#6	\$400.00	November 10, 2020
#7	\$400.00	December 10, 2020
#8	\$400.00	January 10, 2021
#9	\$400.00	February 10, 2021
#10	\$400.00	March 10, 2021
#11	\$400.00	April 10, 2021
#12	\$400.00	May 10, 2021

In addition, the penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel

Alabama Department of Environmental Management

P.O. Box 301463

Montgomery, Alabama 36130-1463

All checks shall reference Mr. and Mrs. Ramsey's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Mr. and Mrs. Ramsey shall cease and desist from operating an UAD.

C. That, within thirty days of issuance of this Order, Mr. and Mrs. Ramsey 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. and Mrs.

Ramsey shall implement the site closure plan and remove the wastes onsite to an approved landfill unit within 180 days of closure plan approval.

D. That, within thirty days of completion of remediation activities, Mr. and Mrs. Ramsey 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 Site.
3. Documentation that all regulated 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 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, Mr. and Mrs. Ramsey agrees to comply with the terms, limitations, and conditions of the Department's regulations immediately upon the effective date of this Consent Order and every day thereafter.

F. That, the parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

G. That, the parties agree that this Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of the violations which are cited in this Consent Order.

H. That, for purposes of this Consent Order only, Mr. and Mrs. Ramsey agrees that the Department may properly bring an action to compel compliance with the terms and

conditions contained herein in the Circuit Court of Montgomery County. Mr. and Mrs. Ramsey also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Mr. and Mrs. Ramsey shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Mr. and Mrs. Ramsey, including her contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Commission) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Mr. and Mrs. Ramsey, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. That, the Department and Mr. and Mrs. Ramsey agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Site which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Mr. and Mrs. Ramsey shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if

future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

J. That, the Department and Mr. and Mrs. Ramsey agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Mr. and Mrs. Ramsey does hereby waive any hearing on the terms and conditions of same.

K. That, the Department and Mr. and Mrs. Ramsey agree this Consent Order shall not affect Mr. and Mrs. Ramsey's obligation to comply with any Federal, State, or local laws or regulations.

L. That, the Department and Mr. and Mrs. Ramsey agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

M. That, the Department and Mr. and Mrs. Ramsey agree that, should any provision of this Consent 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.

N. That, the Department and Mr. and Mrs. Ramsey agree any modifications to this Consent Order must be agreed to in writing signed by both parties.

O. That, the Department and Mr. and Mrs. Ramsey agree that, except as otherwise set forth herein, this Consent 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 the Commission of its obligations to comply in the future with any permit.

JOSEPH AND SHARYON RAMSEY

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Joseph Ramsey
(Signature of Authorized Representative)

Lance R. LeFleur
Director

Sharyon Ramsey
SHARYON RAMSEY
(Printed Name)

Date Executed

OWNER
(Printed Title)

3/6/20
Date Signed

Attachment A

Joseph and Sharyon Ramsey
 Unauthorized Solid Waste Dump / Illegal Open Burning
 Gadsden, Etowah County, Alabama

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

Adjustments to Amount of Initial Penalty*	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	(\$35,000)
	\$0

Economic Benefit (+)*	\$0
Amount of Initial Penalty	\$40,000
Total Adjustments (-)	(\$35,000)
FINAL PENALTY	\$5,000

Footnotes

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