

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )

Preferred Contractors, Inc. )

Lillian, Baldwin County, Alabama )

\*\*\*\*Proposed\*\*\*\*

ADMINISTRATIVE

ORDER NO: 19-\_\_-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 (hereinafter, the “Department” 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. Preferred Contractors, Inc. (hereinafter, “PCI”) is general contractor operating in and from Lillian, Baldwin 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-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. On March 12, 2019, the Department received a complaint of unauthorized open burning of imported vegetation being conducted by PCI on property located at 32073 US-98 in Lillian, Baldwin County (hereinafter, the "Site").

6. On March 13, 2019, Department personnel conducted a complaint investigation of the Site and observed unauthorized open burning of imported vegetation. Department personnel informed Gary Broxson, owner of PCI, via telephone of the Department's Open Burning regulations and advised him to cease all unauthorized open burning.

7. 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: PCI continued conducting unauthorized open burning of imported vegetation at the Site after being warned. The Department considers this violation to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by PCI to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01(2)(b)1.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: PCI likely derived economic benefit by not legally disposing of imported vegetation.

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

E. HISTORY OF PREVIOUS VIOLATIONS: On March 6, 2017, the Department received a complaint of unauthorized open burning of imported vegetation and construction debris by PCI at the Site. On March 13, 2017, Department personnel conducted a complaint investigation at the Site and observed unauthorized open burning of a large quantity of imported vegetation. Department personnel gave a copy of the Open Burning regulations to Clint Broxson who identified himself as the son of Gary Broxson the owner of PCI and advised him to cease all unauthorized open burning.

F. THE ABILITY TO PAY: PCI 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, PCI shall pay to the Department a civil penalty in the amount of \$3,000.00 for the violation 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, PCI shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-3-.01(2)(b)1.

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

ORDERED and ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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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 **91 7199 9991 7030 3272 4783** with instructions to forward and return receipt, to:

Preferred Contractors Inc.  
Attention: Gary Broxson  
32021 US Hwy 98  
Lillian, Alabama 36549

DONE this the 19<sup>th</sup> day of April 2019.



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

## ATTACHMENT A

**Preferred Contractors, Inc.  
Lillian, Baldwin County, AL**

| <b>Violation*</b>              | <b>Number of Violations*</b> | <b>Seriousness of Violation*</b> | <b>Standard of Care*</b> | <b>History of Previous Violations*</b> |                               |
|--------------------------------|------------------------------|----------------------------------|--------------------------|--|-------------------------------|
| Illegal open burning           | 1                            | \$1,500                          | \$1,000                  | \$0                                    |                               |
|                                |                              |                                  |                          |  | <b>Total of Three Factors</b> |
| <b><i>TOTAL PER FACTOR</i></b> |                              | <b><i>\$1,500</i></b>            | <b><i>\$1,000</i></b>    | <b><i>\$0</i></b>                      | <b><i>\$2,500</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>\$500</b>      |
| <b>Amount of Initial Penalty</b> | <b>\$3,000</b>    |
| <b>Total Adjustments (+/-)</b>   | <b>\$0</b>        |
| <b>FINAL PENALTY</b>             | <b>\$3,000.00</b> |

### Footnotes

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