

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
)
City of Bridgeport)
Bridgeport, Jackson County, Alabama)

****Proposed****
ADMINISTRATIVE
ORDER NO: 20-__-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. The City of Bridgeport (hereinafter, “Bridgeport”) owns real property located at latitude/ longitude (34.940, -85.704) off of Spur Track Circle in Bridgeport, Jackson County, Alabama (hereinafter, the “Site”).
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. ADEM Admin. Code r. 335-3-3-.01(2)(b)2 states that "the location of the burning must be at least 500 feet from the nearest occupied dwelling other than a dwelling located on the property on which the burning is conducted."

6. 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."

7. In August 2019, the Jackson County EMA Director, Felix Jackson, submitted a request to the Department, on behalf of Bridgeport, to burn storm debris at the Site. The Department requested additional information from Mr. Jackson and Bridgeport Mayor Hughes to verify the origin of the material prior to burning. The requested information was not submitted to the Department. Also, the information provided by Mr. Jackson indicated that some burning began at the Site on July 29, 2019 prior to the request to burn.

8. On July 7, 2020, Department personnel observed active burning occurring at the Site. The burning material included, but was not limited to: imported vegetation, construction debris, plastics, metals, and various household refuse. The Site is located within 500 feet of multiple occupied dwellings. While on Site, the Department Inspector was informed by city personnel that the fire had been allowed to burn for 2-4 weeks to clean up the Site.

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: Bridgeport allowed unauthorized open burning of imported vegetation and various regulated materials at the Site. The Department considers this violation to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Bridgeport to comply with the applicable requirements of the ADEM Admin. Code rs. 335-3-3-.01(2)(b)1, 335-3-3-.01(2)(b)2, and 335-3-3-.01(2)(b)4.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Bridgeport likely derived an economic benefit by not legally disposing of the vegetative debris and refuse.

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

E. HISTORY OF PREVIOUS VIOLATIONS: Bridgeport has a history of violating the Department's regulations regarding Open Burning. In October 2016, the Department advised Bridgeport of the Open Burning Regulations and requested that Bridgeport cease all unauthorized open burning.

F. THE ABILITY TO PAY: Bridgeport 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, Bridgeport shall pay to the Department a civil penalty in the amount of \$4,000.00 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, Bridgeport shall ensure immediate and future compliance with ADEM Admin. Codes rs. 335-3-3-.01(2)(b)1, 335-3-3-.01(2)(b)2, 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 Bridgeport 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 Bridgeport for the violation 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 Bridgeport for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, 2020.

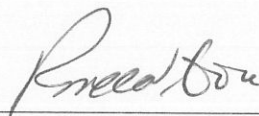
Lance R. LeFleur, Director
Alabama Department of Environmental
Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

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 7039 2998 1350** with instructions to forward and return receipt, to:

City of Bridgeport
Mayor David Hughes
PO Box 747
Bridgeport, Alabama 35740

DONE this the 13th day of August, 2020.



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

ATTACHMENT A

City of Bridgeport Bridgeport, Jackson County, AL

| Violation* | Number of Violations* | Seriousness of Violation* | Standard of Care* | History of Previous Violations* | |
|--------------------------------|-----------------------|---------------------------|-----------------------|---------------------------------|-------------------------------|
| Illegal open burning | 1 | \$2,000 | \$1,000 | \$0 | |
| | | | | | Total of Three Factors |
| <i>TOTAL PER FACTOR</i> | | <i>\$2,000</i> | <i>\$1,000</i> | <i>\$0</i> | <i>\$3,000</i> |

| Adjustments to Amount of Initial Penalty | |
|---|-----|
| Mitigating Factors (-) | |
| Ability to Pay (-) | |
| Other Factors (+/-) | |
| Total Adjustments (+/-) <i>Enter at Right</i> | \$0 |

| | |
|----------------------------------|------------|
| Economic Benefit (+) | \$1,000 |
| Amount of Initial Penalty | \$4,000 |
| Total Adjustments (+/-) | \$0 |
| FINAL PENALTY | \$4,000.00 |

Footnotes

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