

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )  
 )  
Steven Matthews )  
Killen, Lauderdale 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. Steven Matthews (hereinafter, “Matthews”) owns and operates a tree trimming service in and from Killen, Lauderdale 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 August 4, 2011, the Department received a complaint of unauthorized open burning of imported vegetation being conducted by Matthews. On August 5, 2011, Department personnel investigated the complaint and observed smoldering imported vegetation. The Department's Inspector informed Matthews via phone of the open burning regulations. Matthews stated that he would not burn imported vegetation again.

6. On December 30, 2019, the Department received a complaint of unauthorized open burning being conducted on property located at 136 Simmons Street in Killen, Lauderdale County, Alabama (hereinafter, the "Site").

7. On January 3, 2020, the Department received a second complaint of unauthorized open burning being conducted at the Site.

8. On January 8, 2020, Department personnel conducted a complaint investigation of the Site and observed unauthorized open burning of imported vegetation being conducted by Matthews's tree service.

9. On January 9, 2020, the Department received a complaint of unauthorized open burning of imported vegetation being conducted by Matthews on property located at latitude/ longitude (34.951190, -87.499239) on County Road 25 in Killen, Lauderdale County, Alabama.

10. In a January 14, 2020 phone conversation with Matthews, Department personnel discuss the complaints of unauthorized burning of imported vegetation being conducted at the Site and on County Road 25. Matthews admitted to burning imported vegetation on the County Road 25 property. The Department Inspector advised Matthews

of the Open Burning regulations and advised Matthews to cease all unauthorized open burning.

11. 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 violations, 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: Matthews conducted unauthorized open burning of imported vegetation after being previously warned. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Matthews 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: Matthews 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 Matthews to mitigate possible effects of this violation upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Matthews violated the Open Burning regulations in 2011.

F. THE ABILITY TO PAY: Matthews has 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, Matthews shall pay to the Department a civil penalty in the amount of \$3,000.00 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, Matthews 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 Matthews of his 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 Matthews 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 Matthews for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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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 2980 5748** with instructions to forward and return receipt, to:

Steven Matthews  
6090 County Road 33  
Killen, Alabama 35645

DONE this the 28<sup>th</sup> day of April, 2020.



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

# ATTACHMENT A

**Steven Matthews**  
Killen, Lauderdale County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Illegal open burning	2	\$2,500	\$1,500	\$0	
					<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<b>\$2,500</b>	<b>\$1,500</b>	<b>\$0</b>	<b>\$4,000</b>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	-\$2,000
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	-\$2,000

<b>Economic Benefit (+)</b>	\$1,000
<b>Amount of Initial Penalty</b>	\$5,000
<b>Total Adjustments (+/-)</b>	-\$2,000
<b>FINAL PENALTY</b>	\$3,000.00

Footnotes

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