

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	
Roland Henderson Douglas, II	)	PROPOSED
Guntersville, Marshall County, Alabama	)	ADMINISTRATIVE
	)	ORDER NO: 23-XXX-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 (AAPCA), Ala. Code §§22-28-1 to 22-28-23, as amended, the Alabama Department of Environmental Management (“Department” or “ADEM”) Administrative Code of Regulations (“ADEM Admin. Code r.”) promulgated pursuant thereto, the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended, and the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§22-27-1 to 22-27-18, as amended, the Department makes the following FINDINGS:

1. Roland “Joey” Henderson Douglas, II (Douglas) owns real property (Parcel Identification Number 16-02-09-0-000-031.000) located on Eidson Road (the “Site”), in Guntersville, Marshall 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 (AAPCA), Ala. Code §§ 22-28-1 to 22-28-23, 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.

5. 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.

6. Douglas violated ADEM Admin. Code r. 335-3-3-.01. The open burning regulation and did not qualify for any of the exemptions specified in the open burning regulations on October 20, 2022 and November 29, 2022

7. On October 12, 2022, the Department received a complaint from a neighboring landowner regarding an ongoing fire at the Site. The complainant stated that Douglas dumps debris from his tree removal service and also allows others to dump imported vegetation and regulated waste for pay. Doors, vinyl siding, tires, shingles, and miscellaneous household trash have been observed on the property.

8. On October 13, 2022, in response to a complaint, Department personnel inspected the Site and noted the following:

A. The presence of an unpermitted solid waste disposal area.

B. Douglas was observed operating as a business on the Site and improperly disposing of regulated solid waste at the time of the inspection.

C. According to online Marshall County property tax records, Douglas was verified to be the Site's owner at the time of the inspection.

D. Approximately seventy-five (75) cubic yards of regulated solid waste, including construction/demolition (C/D) waste, had been openly dumped on the Site without having a Department-issued solid waste disposal facility permit.

E. Douglas is responsible for the placement of the aforementioned regulated solid waste on the Site, which resulted in the creation of an unauthorized solid waste dump (UAD).

9. On October 14, 2022, the Department received a complaint from Chief James Edwards of Alder Springs Volunteer Fire Department. Chief Edwards informed the Department that the fire at the property had been burning since July 13, 2022. He described the material being burned as tree debris along with various types of imported waste where Douglas has allowed others to dump at the Site.

10. On October 20, 2022 the Department visited the Site and observed a large, active burn consisting of dumped vegetation, construction debris, mattresses, metal, and tires. The burn was taking place along a cliff side with a majority of the material being located at the bottom of the ravine. A resident that was present at the site stated that a bulldozer is used to push the material into the ravine. This active burn is in violation of ADEM Admin. Code r. 335-3-3-.01 for Open Burning.

11. During a phone conversation with Department personnel on October 28, 2022, Chief Edwards stated that Douglas continues to allow materials to be imported and burned.

12. On October 31, 2022, the Department's Land Division issued a Notice of Violation (NOV) to Douglas for a UAD containing approximately 75 cubic yards of C/D waste and mailed the document via Certified Mail with the United States Postal Service.

13. On November 8, 2022, the Department emailed a copy of the Land Division's NOV to Douglas.

14. On November 16, 2022, the original NOV from the Land Division was returned to the Department, with the note "unable to forward".

15. On November 18, 2022, the Department's Land Division resent the NOV to Douglas through FedEx Direct Signature. On December 19, 2022, the NOV was returned to the Department.

16. On November 29, 2022, Department personnel observed the unloading of vegetation from multiple trucks in close proximity to piles of burning vegetation. The piles of burning vegetation are in violation of ADEM Admin. Code r. 335-3-3-.01 for Open Burning.

17. During a December 1, 2022 phone conversation with Department personnel, Mr. Douglas was instructed to cease the importation of all vegetation until the fire is extinguished.

18. On January 5, 2023, Department personnel conducted a follow-up inspection at the Site and observed the continued existence of the UAD. During the inspection, the Land Division's NOV was hand-delivered to Douglas.

19. On January 25, 2023, the Department received email correspondence from Douglas, on behalf of Douglas Tree Service, indicating it was in the process of cleaning the Site with an anticipated completion within 30 days.

20. On February 23, 2023, Department personnel conducted a second follow-up inspection at the Site and discovered that the UAD had increased to approximately eighty-five (85) cubic yards of C/D waste.

21. On June 14, 2023, in response to another complaint, Department personnel conducted a third follow-up inspection at the Site and discovered that while a portion of the Site had been consumed by fire, the UAD, which was still present, had been reduced to approximately 50 cubic yards of C/D waste.

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 violations 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:** The creation, contribution to, or operation of a UAD is inherently a public nuisance, a threat to public health, and a threat to the environment. The Department is not aware of any irreparable harm to the environment, or any immediate threat to human health or the safety of the public as a result of the UAD's presence on the Site. Douglas has continued to illegally open burn imported

vegetation and regulated materials. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Douglas to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01, 335-13-11-.03(2), the AAPCA, or the SWRMMA.

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

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

E. HISTORY OF PREVIOUS VIOLATIONS: On February 8, 2018, a final Administrative Order, regarding air violations, was hand-delivered to Douglas with an assessed civil penalty of \$5,000. As of this date, the Department has yet to receive payment from Douglas. Based on a review of Department records, Douglas has had numerous air violations but does not appear to have a documented history of violations of the applicable Land requirements under ADEM Admin. Code Div. 335-13.

F. THE ABILITY TO PAY: Douglas 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, Douglas shall pay to the Department a civil penalty in the amount of \$37,000.00 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, Douglas shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-3-.01, 335-13-11-.03(2), the AAPCA, and the SWRMMA.

C. That, within thirty days of issuance of this Order, Douglas 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. Unless otherwise directed by the Department, Douglas shall implement the site closure plan as presented, remove and properly dispose of or recycle all solid waste materials in a permitted landfill unit or at a legitimate recycling facility, and comply with all applicable requirements of Division 335-13 of the ADEM Admin. Code.

D. That, within fifteen days of completion of remediation activities, Douglas shall provide the following information to the Department as proof that all closure actions have been completed:

1. Time period in which the remediation activities took place.
2. Total volume of waste removed from the Site.
3. Documentation that all regulated solid waste, including both surface and subsurface waste, was removed from the Site.
4. A copy of receipts documenting that all regulated waste was taken to an appropriately permitted landfill or legitimate recycling facility.
5. Photographs of the solid waste disposal area(s) on the Site, before and after remediation.
6. Documentation that the UAD was properly closed to prevent erosion on the Site, if applicable.
7. Documentation that the Site has been secured to prevent any future illegal dumping, if applicable.

E. 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.

F. 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 Douglas of obligations to comply in the future with any permit or other written direction from the Department.



G. That, issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Douglas for the violations cited herein.

H. That, failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against Douglas for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

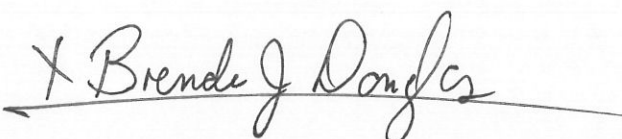
CERTIFICATE OF SERVICE

I, Eric Myers, do hereby certify that I have served this Administrative Order upon the person(s) listed below.

Roland Henderson Douglas, II  
12896 AL Hwy 227  
Guntersville, Alabama 35976

DONE this the 1<sup>st</sup> day of March 2024.

  
\_\_\_\_\_  
Alabama Department of  
Environmental Management

  
\_\_\_\_\_  
Brenda J Douglas

## ATTACHMENT A

Roland Henderson Douglas Jr.  
 Albertville, Marshall County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Illegal open burning	2	\$10,000	\$10,000	\$5,000	
Creation of an Unauthorized Dump	1	\$3,000	\$4,000	\$0	<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<i>\$13,000</i>	<i>\$14,000</i>	<i>\$5,000</i>	<i>\$32,000</i>

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

Economic Benefit (+)	\$5,000
Amount of Initial Penalty	\$37,000
Total Adjustments (+/-)	\$0
<b>FINAL PENALTY</b>	<b>\$37,000.00</b>

Footnotes

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