

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
)
Derek Johnson)
Dadeville, Tallapoosa County, Alabama)

Proposed
ADMINISTRATIVE
ORDER NO: 22-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, 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, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, *as amended*, the Department makes the following FINDINGS:

1. Derek Johnson (“Johnson”) is the owner of a tree service company operating on property at GPS Coordinates 32.8153,-85.7764 Dadeville, Tallapoosa 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-16, 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. On August 3, 2020, the Department received a complaint of open burning taking place at GPS Coordinates 32.8153,-85.7764, ("Site") in Dadeville, Tallapoosa County, Alabama. The burn pile consisted of vegetation that did not originate on-site and was within 500 feet of an occupied dwelling. Based on this evidence, unauthorized open burning had been conducted at the Site, in violation of ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)2.

7. On August 26, 2020, the Department issued a Notice of Violation (NOV) to Johnson requesting that he submit a written response regarding the unauthorized open burning.

8. On September 9, 2020, the Department received a response to the NOV from Johnson stating that vegetation from the Site and from customer's properties had been burned. The response also stated that burning had ceased.

9. On August 27, 2021, the Department personnel observed unauthorized open burning being conducted at the Site.

10. 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: Johnson conducted unauthorized open burning at the Site and the Department considers this violation to be serious.

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

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Johnson likely derived economic benefit by not properly disposing of debris.

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

E. HISTORY OF PREVIOUS VIOLATIONS: Johnson has a previous history of violations with the Department for unauthorized open burning.

F. THE ABILITY TO PAY: Johnson 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, Johnson shall pay to the Department a civil penalty in the amount of \$4,000.00 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, Johnson shall ensure immediate and future compliance with ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)2.

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

ORDERED and ISSUED this ____ day of _____, 2021.

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 **9489 0090 0027 6286 8093 71** with instructions to forward and return receipt, to:

Derek Johnson
108 West Cusseta Street
Dadeville, Alabama 36853

DONE this the 17th day of November, 2021.



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

ATTACHMENT A

**Derek Johnson
Tallapoosa County, Alabama**

| Violation* | Number of Violations* | Seriousness of Violation* | Standard of Care* | History of Previous Violations* | |
|---------------------------|-----------------------|---------------------------|-------------------|---------------------------------|-------------------------------|
| Unauthorized open burning | 1 | \$1,500 | \$1,000 | \$500 | |
| | | | | | Total of Three Factors |
| TOTAL PER FACTOR | | \$1,500 | \$1,000 | \$500 | \$3,000 |

| | |
|---|-----|
| 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.