

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

) IN THE MATTER OF:)) Marcus Rutland) 151 Coats Street UAD) Double Springs, Winston County, Alabama))	Order No. 24-XXX-SW
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FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended; the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18, as amended; and the Alabama Department of Environmental Management’s (“ADEM” or “Department”) Administrative Code of Regulations (“ADEM Admin. Code r.”) promulgated pursuant thereto, the Department makes the following FINDINGS:

1. Marcus Rutland (“Rutland”) operates an unauthorized dump on real property, identified as Parcel ID Number 67-08-09-29-0-204-045.002, located at 151 Coats Street in Double Springs, Winston County, Alabama (“the Site”).
2. Pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Department is a duly constituted department of the State of Alabama.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, and Ala. Code § 22-27-9(a), as amended, the Department is the state agency authorized to administer and enforce the provisions of the SWRMMA, Ala. Code §§ 22-27-1 to 22-27-18, 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. On August 30, 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. Rutland was not residing at the Site.

C. According to Winston County property tax records, Rick's Inc. owned the Site at the time of inspection.

D. Approximately 150 cubic yards of regulated solid waste, including construction/demolition waste and household waste, were discovered at the Site without a Department-issued solid waste disposal facility permit. Rutland informed Department personnel that he was personally responsible for the aforementioned regulated solid waste being deposited at the Site.

E. The placement of regulated solid waste on the Site appeared to constitute the creation of an unauthorized dump ("UAD"), for which Rutland bears responsibility.

7. On September 13, 2022, a follow-up inspection indicated that the UAD was still present and that no visible efforts had been made to clean up or remediate the UAD.

8. On September 30, 2022, the Department issued Mr. Rutland a Notice of Violation ("NOV") for creating a UAD, requiring him to abate the UAD and properly close it. In addition, a Notice of Enforcement ("NOE") letter was sent to Rick's Inc., the listed owner of the Site.

9. The NOV and NOE were mailed to Mr. Rutland and Rick's Inc., respectively, via the United States Postal Service (USPS). According to the USPS online tracking system, the documents were delivered on October 7, 2022.

10. On December 20, 2022, a second follow-up inspection indicated that no discernible work had been done to clean up or remediate the UAD.

11. On April 26, 2023, a third follow-up inspection revealed no steps had been taken to clean up or remediate the UAD. Furthermore, Department personnel discovered that some of the previously observed regulated solid waste had been relocated and partially covered in soil.

12. On January 30, 2024, a fourth follow-up inspection revealed that no visible actions had been taken to remediate the UAD. Additionally, a significant amount of sawdust was found in the areas where most of the waste had previously been identified in inspection reports, potentially concealing the waste.

13. To date, the Department has not received a response to the NOV or the NOE.

14. 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 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. Each day such a 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.

B. THE STANDARD OF CARE: Rutland failed to abide by requirements applicable to the lawful disposal of solid wastes and failed to comply with directives from the Department regarding the proper abatement and closure of the UAD.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to establish if Rutland has realized a significant economic benefit as a result of the violation cited herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of efforts by Rutland to mitigate any potential adverse effects upon the environment, human health, or public safety which may have been caused as a result of the UAD.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Rutland does not appear to have a documented history of violations of the applicable requirements of ADEM Admin. Code div. 335-13.

F. THE ABILITY TO PAY: The Department does not have any evidence indicating Rutland's inability to pay the civil penalty assessed herein.

15. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, as well as other factors, and has concluded that a civil penalty is appropriate for the violation cited herein (see Attachment A, which is made a part of the Department's FINDINGS).

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7, and 22-27-11, as amended, it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Rutland shall pay the Department a civil penalty in the amount of \$7,000 for the violation cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment acceptable to the Department and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

All payments shall reference Rutland's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon issuance of this Order and continuing each and every day thereafter, Rutland shall cease and desist from creating, operating, or contributing to any UADs.

C. That, within thirty days after the issuance of this Order, Rutland 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, Rutland 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 registered recycling facility, and comply with all applicable requirements of Division 335-13 of the ADEM Admin. Code.

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

1. 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 surface and subsurface waste, was removed from the Site.

4. A copy of receipts documenting that all regulated waste was taken to a permitted landfill or registered 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. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Rutland for the violation cited herein.

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

ORDERED and ISSUED this ____ day of _____, 2024.

Lance R. LeFleur
Director

Attachment A

**Marcus Rutland
151 Coats Street UAD**

Double Springs, Winston County

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Creation of an Unauthorized Dump	1	\$3,000	\$4,000	\$0	Total of Three Factors
TOTAL PER FACTOR		\$3,000	\$4,000	\$0	\$7,000

Adjustments to Amount of Initial Penalty*	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
	\$0

Economic Benefit (+)*	\$0
Amount of Initial Penalty	\$7,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$7,000

Footnotes

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