

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
)
Brett Herring)
Hartselle, Morgan County, Alabama)

PROPOSED
ADMINISTRATIVE
ORDER NO: 21-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 (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. Brett Herring (hereinafter, “Herring”) owns real property located at 407 Herring Road in Hartselle, Morgan 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. On February 4, 2021, the Department was made aware by the Alabama Forestry Commission of a large fire occurring at the Site. Per the Alabama Forestry Commission, the local fire department responded to the call and was unable to control the fire.

6. On February 5, 2021, Department personnel conducted an investigation of the Site and observed unauthorized open burning of a large quantity of imported vegetation.

7. On February 18, 2021, the Department issued a Notice of Violation (NOV) to Herring regarding the unauthorized open burning. The requested response to the NOV was received by the Department.

8. 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: Herring conducted unauthorized open burning of imported vegetation. The Department considers this violation to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Herring 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: Herring likely derived an economic benefit by not legally disposing of the imported vegetation.

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

E. HISTORY OF PREVIOUS VIOLATIONS: On August 31, 2018, the Department was notified by the Alabama Forestry Commission of a large ongoing fire occurring at the Site. On September 20, 2018, Department personnel conducted an investigation of the Site and observed evidence of unauthorized open burning of imported vegetation being conducted during the Burn Ban. The Department Inspector discussed the Department's Open Burning regulations with Herring.

F. THE ABILITY TO PAY: Herring 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, Herring shall pay to the Department a civil penalty in the amount of \$2,000.00 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, Herring 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 Herring 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 Herring 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 Herring for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2021.

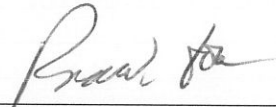
Lance R. LeFleur, Director
Alabama Department of Environmental
Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

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 6294 8977 11** with instructions to forward and return receipt, to:

Mr. Brett Herring
407 Herring Road
Hartselle, Alabama 35640

DONE this the 31st day of March, 2021.



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

ATTACHMENT A

Brett Herring
Hartselle, Morgan County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Illegal open burning	1	\$750	\$500	\$250	
					Total of Three Factors
TOTAL PER FACTOR		\$750	\$500	\$250	\$1,500

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) Enter at Right	

Economic Benefit (+)	\$500
Amount of Initial Penalty	\$2,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$2,000.00

Footnotes

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