

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

 IN THE MATTER OF:)
)
Alan Adrian Blackwell)
13975 Highway 45 UAD)
Chunchula, Mobile County, Alabama)

Order No. 23-XXX-SW

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 (hereinafter “ADEM” or “the Department”) Administrative Code of Regulations (hereinafter “ADEM Admin. Code r.”) promulgated pursuant thereto, the Department makes the following FINDINGS:

1. Alan Adrian Blackwell (hereinafter “Mr. Blackwell”) owns real property, identified as Parcel 02-14-01-12-0-000-006.000, located at 13975 Highway 45 in Chunchula, Mobile 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 the 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. On July 18, 2019, Department personnel conducted an initial site inspection and observed the presence of a UAD. A review of Mobile County property records revealed Mr. Blackwell as the owner of the Site. At the time of the inspection, Mr. Blackwell's father was residing on the Site. The inspection and a review of Mr. Blackwell's compliance with certain requirements of Division 13 of the ADEM Admin. Code revealed the following:

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.

During the inspection, ADEM personnel observed 180 cubic yards of regulated solid waste, including household waste, construction/ demolition waste, appliances, and scrap tires, dumped on the Site without a permit from the Department, thereby constituting the creation of a UAD, for which Mr. Blackwell, as the Site owner, is responsible.

6. On July 18, 2019, the Department issued to Mr. Blackwell a Notice of Violation ("NOV") requiring the abatement and closure of the UAD.

7. On August 12, 2019, the NOV was returned to the Department unclaimed.

8. On August 27, 2019, the Department sent the NOV to Mr. Blackwell via FedEx.

9. On November 21, 2019, the NOV was delivered to the residence via FedEx.

10. The Department has not received a response to the NOV.

11. On December 3, 2019, Department personnel conducted a follow-up site inspection and observed the UAD was still in existence.

12. During follow-up inspections conducted on February 10, 2021, September 3, 2021, and April 28, 2022, Department personnel observed that the UAD was still in existence. At the time of the inspections, the UAD consisted of approximately 180 cubic

yards of regulated solid waste including scrap metal, construction/demolition waste, household waste, scrap vehicles, appliances, and scrap tires.

13. On August 16, 2022, Department personnel conducted their fifth follow-up site inspection and observed the UAD was still in existence. At the time of the inspection, the UAD consisted of regulated solid wastes including scrap metal, construction/demolition waste, household waste, scrap vehicles, appliances, and approximately 20 scrap tires.

14. On February 23, 2023, Department personnel conducted their sixth follow-up site inspection and observed the UAD was still in existence. At the time of inspection, the UAD consisted of approximately 600 cubic yards of regulated solid wastes including scrap metal, construction/demolition waste, household waste, appliances, rubbish, scrap vehicles, and scrap tires.

15. 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 a public nuisance per se and a menace to public health. With regards to the UAD located at the Site, the Department is unaware of any irreparable

harm to the environment, or any immediate threat to human health or to the safety of the public as a result of this violation.

B. THE STANDARD OF CARE: Mr. Blackwell failed to abide by requirements applicable to the 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 ascertain if Mr. Blackwell 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 any efforts by Mr. Blackwell to mitigate any potential effects upon the environment and human health that may have been caused as a result of the UAD.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Mr. Blackwell does not have a documented history of previous violations of the applicable requirements of Division 13 of the ADEM Admin. Code.

F. THE ABILITY TO PAY: The Department does not have any evidence indicating Mr. Blackwell is unable to pay the civil penalty.

18. 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 of issuance of this Order, Mr. Blackwell shall pay to the Department a civil penalty in the amount of \$5,000 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 Mr. Blackwell'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, Mr. Blackwell shall cease and desist from creating, operating, or contributing to any UADs.

C. That, within thirty days of issuance of this Order, Mr. Blackwell 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. Mr. Blackwell shall implement the site closure plan, remove and properly dispose of all solid waste materials in a permitted solid waste disposal facility or transport any recyclable materials to 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, Mr. Blackwell is required to report the following information to the Department in order to provide proof of closure actions:

1. Time period in which the remediation activities took place.
2. Total volume of waste removed from the Site.
3. Documentation that all regulated 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 a permitted solid waste disposal 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, 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 Mr. Blackwell 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 Mr. Blackwell for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, 2023.

Lance R. LeFleur
Director

Attachment A

Alan Adrian Blackwell
 13975 Highway 45 Unauthorized Solid Waste Dump
 Chunchula, Mobile County, Alabama

| Violation* | Number of Violations* | Seriousness of Violation* | Standard of Care* | History of Previous Violations* | |
|----------------------------------|-----------------------|---------------------------|-------------------|---------------------------------|------------------------|
| Creation of an Unauthorized Dump | 1 | \$4,500 | \$500 | \$0 | Total of Three Factors |
| TOTAL PER FACTOR | | \$4,500 | \$500 | \$0 | \$5,000 |

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

| | |
|---------------------------|----------------|
| Economic Benefit (+)* | \$0 |
| Amount of Initial Penalty | \$5,000 |
| Total Adjustments (+/-) | \$0 |
| FINAL PENALTY | \$5,000 |

Footnotes

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