

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
City of Demopolis)	PROPOSED
Demopolis, Marengo County, Alabama)	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. The City of Demopolis (“City”) owns and operates real property located off E. Fulton Street (the “Site”). The Site is located northeast of Hwy 43 at latitude/longitude (32.5227, -87.8346), Demopolis, Marengo County, Alabama. The Parcel Number associated with the Site is 480206241001003.

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. ADEM Admin. Code r. 335-3-3-.01(2)(b)4 states that "Only vegetation and untreated wood may be burned. It is unauthorized to open burn heavy oils, asphalt products, plastics, vinyl materials, insulation, paper, cardboard, natural or synthetic rubber, salvage or scrap materials, chemicals, garbage, treated or painted wood, or any trash."

6. On July 23, 2022, the Department received a complaint regarding the unauthorized open burning of imported vegetation and other regulated materials being conducted by the City at the Site.

7. On July 24, 2022, an inspection was performed at the Site by Department personnel. Large piles of unburned vegetation as well as evidence of previous burns were observed on the Site. Various regulated materials including, but not limited to, pallets, lumber, styrofoam, and cardboard were mixed in with the imported vegetation.

8. On July 27, 2022, Department personnel sent a Letter of Inquiry to the City requesting information regarding the unauthorized open burning taking place on the Site. The Department received a response on August 12, 2022 from the City's attorney indicating that the City only burned storm debris once since obtaining permission from the Department to burn storm debris at the Site in 2021.

9. 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 City conducted unauthorized open burning of imported vegetation and other regulated materials on at least one occasion. The Department considers this violation to be serious.

B. **THE STANDARD OF CARE:** There appeared to be some care taken by the City 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)4 by getting approval to burn storm debris at the site in 2021 without understanding such an approval is issued by the Department on a case-by-case basis.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The City did not likely derive an economic benefit.

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

E. **HISTORY OF PREVIOUS VIOLATIONS:** The City has no previous history with the Department for violating the open burning regulations.

F. THE ABILITY TO PAY: The City 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, the City shall pay to the Department a civil penalty in the amount of \$1,500.00 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, the City 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)4.

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

ORDERED and ISSUED this _____ day of _____, 2022.

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 **XXXX XXXX XXXX XXXX XXXX XX** with instructions to forward and return receipt, to:

Mayor Woody Collins
City of Demopolis
P.O. Box 580
Demopolis, Alabama 36732

DONE this the ____ day of _____, 2022.

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

ATTACHMENT A

City of Demopolis Demopolis, Marengo County

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	1	\$3,000	\$1,000	\$0	
					Total of Three Factors
<i>TOTAL PER FACTOR</i>		<i>\$3,000</i>	<i>\$1,000</i>	<i>\$0</i>	<i>\$4,000</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	-\$3,500
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	-\$3,500

Economic Benefit (+)	\$1,000
Amount of Initial Penalty	\$5,000
Total Adjustments (+/-)	-\$3,500
FINAL PENALTY	\$1,500.00

Footnotes

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