

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
Bill Patterson Construction, Inc.)	PROPOSED
Summerdale, Baldwin County, Alabama)	ADMINISTRATIVE
)	ORDER NO: 23-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. Bill Patterson (Patterson) owns real property located at 18044 Vaughn Road (the “Site”). The Site is located at latitude/longitude (30.5148, -87.7149), Summerdale, Baldwin County, Alabama. The Parcel Number associated with the Site is 48-04-19-0-000-005.000.

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 (AAPCA), Ala. Code §§ 22-28-1 to 22-28-23, *as amended*.

4. On March 3, 2023, the Department received a complaint from the Deputy Fire Chief of the Summerdale Fire Department (SFD) referencing an unauthorized open burn of materials at the aforementioned location. According to SFD, on the evening of March 3, 2023, SFD was dispatched to the aforementioned location where they encountered a large debris fire. SFD stated that they were prevented from accessing the fire and were asked to leave the property by employees of Bill Patterson Construction that were on site. SFD was given incident report #2303011 by the Summerdale Police Department personnel that responded to the scene. SFD documented observing a large amount of black smoke along with combustible non-vegetative material being burned.

5. On March 10, 2023, Department personnel conducted a site inspection in conjunction with the Summerdale Deputy Fire Chief, the Summerdale Fire Captain, Investigator Dodd with Summerdale Police Department, Ms. Campbell with Baldwin County Planning and Zoning, Baldwin County Solid Waste personnel, the Deputy State Fire Marshall, and Nikki Byrd, office manager, with Patterson Construction. The types of materials observed in the burn pile included household garbage, metals, C&D debris, petroleum and chemicals, plastics, paint cans and tires. The pile was still smoking at the time of the investigation. An odor was also emanating from the pile. New material was observed on top of the pile. Nikki Byrd, office manager for Bill Patterson Construction, was given a copy of the open burning regulations and a verbal explanation of the regulations. She was informed that the material in the pile, once fully extinguished, would need to be disposed of at a permitted landfill and a record kept of the disposal.

6. Patterson conducted unauthorized open burning at the Site, in violation of ADEM Admin. Code r. 335-3-3-.01 and the AAPCA.

7. 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:** Patterson illegally open burned imported vegetation and combustible non-vegetative materials. The Department considers these violations to be serious.

B. **THE STANDARD OF CARE:** There appeared to be no care taken by Patterson to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01 and the AAPCA.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** Patterson likely derived economic benefit by not legally disposing of volumes of imported vegetation and combustible non-vegetative materials.

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

E. HISTORY OF PREVIOUS VIOLATIONS: On February 8, 2022, Administrative Order 22-024-AP was issued to Patterson with an assessed civil penalty of \$40,000.00. This civil penalty addressed open burning violations committed by Patterson.

F. THE ABILITY TO PAY: Patterson 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, Patterson shall pay to the Department a civil penalty in the amount of \$10,000.00 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, Patterson shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-3-.01 and the AAPCA.

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 Patterson 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 Patterson 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 Patterson 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
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 00276298 7357 50** with instructions to forward and return receipt, to:

Bill Patterson Construction, Inc.
18044 Vaughn Road
Summerdale, Alabama 36580

DONE this the 20th day of July, 2023.



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

ATTACHMENT A

Bill Patterson Construction, Inc.
 Summerdale, Baldwin County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Illegal open burning	1	\$2,000	\$2,000	\$5,000	
					Total of Three Factors
TOTAL PER FACTOR		\$2,000	\$2,000	\$5,000	\$9,000

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	\$10,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$10,000.00

Footnotes

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