

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: _____)

City of Jackson)
Jackson, Clarke County, Alabama)

PROPOSED
ADMINISTRATIVE
ORDER NO: 25-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 Jackson (Jackson) owns real property (Parcel Identification Number 16-43-01-12-1-000-001.000) located off River Park Drive (“Site One”) and (Parcel Identification Number 16-42-03-08-1-003-003.000) at 103 Monroe Street (“Site Two”), in Jackson, Clarke County, Alabama.

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. ADEM Admin. Code r. 335-3-3-.01(1) prohibits open burning except for specific listed activities.

5. ADEM Admin. Code r. 335-3-3-.01(2)(a) authorizes open burning of vegetation and untreated wood if it is generated by clearing or maintaining land, or for certain listed purposes.

6. ADEM Admin Code r. 335-3-3-.01(2)(b) limits open burning as authorized by 335-3-3-.01(2)(a) to certain conditions, including:

- a. 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 [335-3-3-.01(2)(b)(4)];
- b. The fire shall be attended at all times [335-3-3-.01(2)(b)(7)].

7. The U.S. Environmental Protection Agency's National Emission Standard for Hazardous Air Pollutants (NESHAP), found at 40 C.F.R. Part 61, Subpart M, is incorporated by reference in ADEM Admin. Code r. 335-3-11-.02(12).

- a. 40 C.F.R. §61.141 defines a regulated facility as “any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer

dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.”

b. 40 C.F.R. § 61.145(a) states “[t]o determine which requirements of...this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos...”.

c. Pursuant to Ala. Code § 22-39-3, *as amended*, [a]ny person, firm, or corporation, before engaging in the business of any of the following services, must be accredited by this state as specified in this chapter to... [i]nspect for asbestos-containing material, or design or conduct response actions in buildings...’

d. 40 C.F.R. § 61.145(b)(3)(i) requires the owner or operator of a demolition or renovation activity for a subject facility to provide written Notice of Intention to Demolish or Renovate (“Notice”) at least ten working days before demolition, asbestos stripping or removal work.

8. On December 5, 2024, the Department received a complaint referencing unauthorized open burning at Site One. Department personnel conducted an inspection on December 9, 2024, and documented unauthorized open burning at time of inspection. The

materials observed included metal, plastic, construction and demolition debris, insulation and tires with tire rims.

9. On January 28, 2025, a Notice of Violation (NOV) was issued to Jackson. The United States Postal Service tracking indicates the NOV was delivered on February 3, 2025. On February 10, 2025, a response was received. In response, Jackson admitted to unauthorized open burning at Site One. This unauthorized open burning included demolition debris from the structure Jackson demolished at Site Two.

10. On February 12, 2025, a Request for Additional Information was mailed to Jackson. The United States Postal Service tracking indicates the letter was delivered on February 18, 2025. On February 24, 2025, a response was received. In response, Jackson admitted responsibility for demolishing a regulated structure at Site Two, without submitting the required demolition notification and without having the required asbestos inspection performed prior to burning the construction and demolition debris at Site One.

11. Jackson conducted unauthorized open burning at Site One, in violation of ADEM Admin. Code r. 335-3-3-.01 and the AAPCA by failing to meet all of the conditions in ADEM Admin. Code r. 335-3-3-.01(2)(a). Jackson demolished a regulated structure at Site Two without having the required asbestos inspection and failing to submit the required notification referenced in 40 C.F.R. §61.145.

12. 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: Jackson conducted unauthorized open burning of regulated materials. Jackson also failed to submit the required notification to the Department and failed to perform, or have performed, the required certified asbestos inspection of the Site before initiating the demolition. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Jackson to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01, the AAPCA, and 40 C.F.R. §61.145.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Jackson derived economic benefit as a result of the violations referenced herein.

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

E. HISTORY OF PREVIOUS VIOLATIONS: Jackson has no known prior history with the Department for violating unauthorized open burning or demolition and asbestos regulations.

F. THE ABILITY TO PAY: Jackson 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, Jackson shall pay to the Department a civil penalty in the amount of \$7,500.00 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, Jackson shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-3-.01, the AAPCA, the 40 C.F.R. §61.145.

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

ORDERED and ISSUED this ____ day of _____, 2025.

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

CERTIFICATE OF SERVICE

I, Aubrey H. White III, 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 6308 6353 60** with instructions to forward and return receipt, to:

The Honorable Paul R. South, Mayor
City of Jackson
400 Commerce Street
Jackson, Alabama 36545

DONE this the 6th day of MARCH, 2025.



Aubrey H. White III
Chief - Air Division
Alabama Department of
Environmental Management

ATTACHMENT A

City of Jackson Jackson, Clarke County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized Open Burning	1	\$1,000	\$500		
Asbestos NESHAP Regulations	2	\$2,000	\$1,000		
					Total of Three Factors
<i>TOTAL PER FACTOR</i>		<i>\$3,000</i>	<i>\$1,500</i>		<i>\$4,500</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	\$0

Economic Benefit (+)	\$3,000
Amount of Initial Penalty	\$7,500
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$7,500

Footnotes

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