

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
Town of Summerdale)	PROPOSED
Summerdale, Baldwin County, Alabama)	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 Town of Summerdale (Summerdale) owns real property (Parcel Identification Number (05-48-09-29-3-000-003.000) off NW 1st Street (the “Site”), in Summerdale, Baldwin 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. The burning must take place on the property on which the combustible fuel originates [335-3-3-.01(2)(b)(1)].
 - b. The location of the burning must be at least 500 feet from the nearest occupied dwelling other than a dwelling located on the property on which the burning is conducted [335-3-3-.01(2)(b)(2)].
 - c. 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)].

7. On March 20, 2025, the Department received a complaint referencing unauthorized open burning at the Site.
8. On March 27, 2025, Department personnel conducted an inspection of the Site and observed a burn pile within 500 feet of the nearest occupied dwelling that contained burned remnants of a barrel, wire, construction debris and imported vegetation.
9. On March 31, 2025, a Notice of Violation (NOV) was issued to Summerdale for unauthorized open burning. On April 29, 2025, a response was received. In response, Summerdale admitted to unauthorized open burning of imported vegetation at the Site.
10. The open burning conducted at the Site did not meet the conditions of ADEM Admin. Code r. 335-3-3-.01(2), thus it constitutes a violation of ADEM Admin Code r. 335-3-3-.01(1).
11. 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: Summerdale conducted open burning of imported vegetation and other materials in violation of the Department's regulations. The Department considers this violation to be serious.
- B. THE STANDARD OF CARE: There appeared to be no care taken by Summerdale 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: Summerdale derived economic benefit by not legally disposing of regulated materials.
- D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Summerdale to mitigate possible effects of these violations upon the environment at the time of the violations.
- E. HISTORY OF PREVIOUS VIOLATIONS: Summerdale has no known prior history with the Department for unauthorized open burning.
- F. THE ABILITY TO PAY: Summerdale 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, Summerdale shall pay to the Department a civil penalty in the amount of \$5,000.00 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, Summerdale 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 Summerdale 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 Summerdale 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 Summerdale for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2025.

Jeffery W. Kitchens, Acting 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 5379 47 with instructions to forward and return receipt, to:

Town of Summerdale
The Honorable David Wilson, Mayor
502 West Lee Avenue
Summerdale, Alabama 36580

DONE this the 12th day of May, 2025.



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

ATTACHMENT A

Town of Summerdale Summerdale, Baldwin County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	1	\$2,500	\$1,500	-	
					Total of Three Factors
TOTAL PER FACTOR		\$2,500	\$1,500	-	\$4,000

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

Economic Benefit (+)	\$1,000
Amount of Initial Penalty	\$5,000
Total Adjustments (+/-)	\$ 0
FINAL PENALTY	\$5,000

Footnotes

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

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Delivered

Delivered, Front Desk/Reception/Mail Room

SUMMERDALE, AL 36580

May 15, 2025, 2:16 pm

Out for Delivery

SUMMERDALE, AL 36580

May 15, 2025, 8:16 am

Arrived at Post Office

SUMMERDALE, AL 36580

May 15, 2025, 8:05 am

Arrived at USPS Regional Facility

MOBILE AL DISTRIBUTION CENTER

May 14, 2025, 6:22 pm

Arrived at USPS Regional Facility

MONTGOMERY AL DISTRIBUTION CENTER

May 13, 2025, 7:47 pm

Accepted at USPS Origin Facility

MONTGOMERY, AL 36104

May 13, 2025, 6:32 pm

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