

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
Lake Martin, Inc.)	PROPOSED
Waverly, Lee 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. Lake Martin, Inc. (LMI) owns the property located at 7176 W Farmville Road, Waverly, Lee County, Alabama (the “Site”). Lee County records indicate the Site was previously listed as a commercial property (restaurant).
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 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)];
 - b. 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. 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 “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.”

[Emphasis added]

- b. 40 C.F.R. § 61.145(a) states in part, “[t]o determine which requirements of paragraphs (a), (b), and (c) 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. 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 workdays before demolition, asbestos stripping or removal work, or any other activity which disturbs the asbestos.
 - d. 40 C.F.R. § 61.145(c)(1) requires the removal of all RACM [regulated asbestos containing material] from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.
8. ADEM Admin. Code r. 335-3-11-.05(1) requires that “[a]ny person, firm, organization, or corporation who is the owner or operator of any asbestos removal project for which notification is required pursuant to the requirements of Rule 335-3-11-.02(12) [Subpart M]

shall ensure that the parties executing the asbestos removal project are certified by the Department.”

9. On April 14, 2025, Department personnel observed a smoke plume and unauthorized open burning being conducted at the Site.
10. During the inspection on April 14, 2025, Department personnel observed vegetation, lumber, sheetrock, painted concrete, assorted metal, and other assorted trash in the burn piles. The burn piles were located approximately 360 feet from an occupied dwelling.
11. On April 23, 2025, the Department issued a Notice of Violation (NOV) to LMI regarding the demolition and unauthorized open burning of demolition waste at the Site.
12. On May 23, 2025, the Department received a response from LMI stating that the structure had been demolished by its contractor. According to the response, the site was demolished “on or about” April 14, 2025, and some of the demolition waste was burned onsite. A ten-day notification was not submitted to ADEM, and the structure was not inspected by an accredited inspector prior to the demolition.
13. The open burning of demolition debris at the Site on April 14, 2025, did not meet the conditions of ADEM Admin. Code r. 335-3-3-.01(2)(b), thus it constitutes a violation of ADEM Admin Code r. 335-3-3-.01 (1).
14. The failure to conduct an inspection by an accredited inspector of the regulated structure for the presence of asbestos containing material is a violation of 40 C.F.R. § 61.145(a), and thus a violation of ADEM Admin. Code r. 335-3-11-.02(12) and ADEM Admin. Code r. 335-3-11-.05(1).

15. The failure to notify the Department of the demolition of the regulated structure at least 10 working days prior to demolition constitutes a violation of 40 C.F.R. § 61.145(b)(3)(i), and thus a violation of ADEM Admin. Code r. 335-3-11-.02(12).
16. 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: LMI 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. Also, LMI conducted open burning of regulated materials in violation of the Department's regulations. The Department considers these violations to be serious.
- B. THE STANDARD OF CARE: There appeared to be no care taken by LMI to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01, ADEM Admin.

Code r. 335-3-11-.02(12), ADEM Admin. Code r. 335-3-11-.05(1), the AAPCA, and 40 C.F.R. §61.145.

- C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: LMI likely derived some 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 LMI to mitigate possible effects of these violations upon the environment at the time of the violations.
- E. HISTORY OF PREVIOUS VIOLATIONS: LMI has no known prior history with the Department for violating demolition/asbestos regulations or unauthorized open burning.
- F. THE ABILITY TO PAY: LMI 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, LMI shall pay to the Department a civil penalty in the amount of \$5,750.00 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, LMI 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 LMI 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 LMI 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 LMI 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 5375 65** with instructions to forward and return receipt, to:

Lake Martin, Inc.
Mr. Thomas Hayley
1695 E University Dr
Auburn, Alabama 36830

DONE this the 17th day of June, 2025.



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

ATTACHMENT A

Lake Martin, Inc.
Waverly, Lee County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	1	\$1,500	\$750	\$0	
Asbestos NESHAP regulations	1	\$1,000	\$500	\$0	
					Total of Three Factors
TOTAL PER FACTOR		\$2,500	\$1,250	\$0	\$3,750

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

Economic Benefit (+)	\$2,000
Amount of Initial Penalty	\$5,750
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$5,750

Footnotes

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