



Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

May 29, 2025

CERTIFIED MAIL NO: 9489 0090 0027 6308 5375 58

SOUTHERN CUTTS TREE SERVICE INC
ZACH SMITH
4407 RAINBOW DRIVE
RAINBOW CITY ALABAMA 35906

RE: PROPOSED ADMINISTRATIVE ORDER
Southern Cutts Tree Service, Inc.
Etowah County

Dear Mr. Smith:

Enclosed please find a proposed Administrative Order which would require you to take certain actions with regard to the alleged violations of applicable environmental laws and regulations. This Order is not final, and we will provide you with an opportunity to present evidence and show cause why this Order should not be made final.

If you wish to respond to the allegations contained in the proposed Order, please provide a written response within **ten (10) days** from the receipt of this letter. Your response should be sent to the undersigned at the above Montgomery address.

In drafting your response, please direct your attention to each of the Findings of Fact in the proposed Order and provide any facts or arguments which you believe are relevant to the alleged violations. Also, provide any additional facts which you believe may mitigate the effect of the violations, or explain why the violations occurred.

In addition, if you would like to have an informal conference with our staff concerning the proposed Order, please do not hesitate to contact us no later than **ten (10) days** from the receipt of this letter, to arrange a conference. You need not request an informal conference if you do not desire to or you feel you have nothing to add to a written response. If you do not request a conference, we will base our final action upon the evidence we have before us, including your written response.

Should an informal conference be requested, you must provide a reply which states who will attend the meeting, their specific concerns, and subjects to be addressed, in writing **five (5) days** prior to the scheduled meeting. Of course, you have the right to be represented by legal counsel in any proceedings by the Department.

If we do not receive a written response from you within **ten (10) days** of the receipt of this letter, the Department will make its final decision based upon the information it currently has before it, require the remedial action currently proposed, and will issue the Order.



Should you have any questions concerning this matter, please telephone Mr. Don Barron, Chief of the Special Services Section of the Air Division, at 334-271-7879.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. H. White III".

Aubrey H. White III, Chief
Air Division

AHW/DWB/CPB

Enclosure: Proposed Administrative Order

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Southern Cutts Tree Service, Inc
Rainbow City, Etowah 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. Southern Cutts Tree Service, Inc. (Southern Cutts), owned by Zach Smith (Smith), operates on real property located on Crescent Drive, Rainbow City, Etowah County, Alabama (the “Site”). The Parcel Number associated with the Site is 15-04-19-0-001-090.000.

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. 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)]; and,

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)].

7. On March 5, 2025, the Department received a complaint alleging unauthorized open burning at the Site. Department personnel conducted an inspection on March 13, 2025, and observed unauthorized open burning of imported vegetation. The burn site is located within 500 feet of the nearest occupied dwelling.

8. On March 25, 2025, a Notice of Violation (NOV) was issued to Southern Cutts. The United States Postal Service tracking indicates the NOV was delivered on April 2, 2025. On April 21, 2025, a response was received. In response, Smith admitted that he conducted open burning of imported vegetation at the Site.

9. The open burning of materials at the Site on March 13, 2025, was not authorized by ADEM Admin. Code r. 335-3-3-.01(1) or 335-3-3-.01(2)(a), constituting a violation of ADEM Admin. Code r. 335-3-3-.01(1).

10. 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: Southern Cutts conducted unauthorized open burning of regulated materials. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Southern Cutts 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: Southern Cutts derived economic benefit by not legally disposing of the waste.

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

E. HISTORY OF PREVIOUS VIOLATIONS: Southern Cutts has no known prior history with the Department for unauthorized open burning

F. THE ABILITY TO PAY: Southern Cutts 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, Southern Cutts shall pay to the Department a civil penalty in the amount of \$4,000 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, Southern Cutts 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 Southern Cutts 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 Southern Cutts 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 Southern Cutts 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 58** with instructions to forward and return receipt, to:

Southern Cutts Tree Service, Inc.
Zach Smith
4407 Rainbow Drive
Rainbow City, Alabama 35906

DONE this the 29th day of May, 2025.



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

ATTACHMENT A

Southern Cutts Tree Service, Inc,
Rainbow City, Etowah County, AL

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

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	\$4,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$4,000.00

Footnotes

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