

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

James Surrey
15077 Jones Lane UAD
Elberta, Baldwin County, Alabama

Order No. 24-XXX-SW

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended; the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18, as amended; and the Alabama Department of Environmental Management's ("ADEM" or "Department") Administrative Code of Regulations ("ADEM Admin. Code r.") promulgated pursuant thereto, the Department makes the following FINDINGS:

1. James Surrey ("Surrey") owns real property located at 15077 Jones Lane, Parcel ID Number 05-52-02-09-0-000-022.000, in Elberta, Baldwin County, Alabama ("the Site").

2. Pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Department is a duly constituted department of the State of Alabama.

3. Pursuant to Ala. Code § 22-22A-4(n), as amended, and Ala. Code § 22-27-9(a), as amended, the Department is the state agency authorized to administer and enforce the provisions of the SWRMMA, Ala. Code §§ 22-27-1 to 22-27-18, as amended.

4. Pursuant to Ala. Code § 22-27-10(b), as amended, and ADEM Admin. Code r. 335-13-11-.03(2), any person who participates in the creation or operation of an unauthorized dump, or contributed to an unauthorized dump, shall be responsible for the removal of the waste or otherwise the closure of the unauthorized dump in accordance with this article and rules of the department. If those who created, operated, or contributed to an unauthorized dump do not remove or close the unauthorized dump,

the landowner shall also be responsible for the removal or otherwise the closure of the unauthorized dump.

5. Pursuant to ADEM Admin. Code rs. 335-13-1-.13(1)(a) and (2), unauthorized dumps are prohibited and must be closed in a manner determined to be necessary by the Department.

6. On January 5, 2022, in response to a complaint, the Department inspected the Site and noted the following:

A. The presence of an unpermitted solid waste disposal area.

B. Surrey was residing on property that was contiguous to the Site.

C. In the Baldwin County property tax records, Surrey was listed as the Site's owner at the time of the inspection.

D. Approximately 1,000 cubic yards of regulated solid waste materials, including construction and demolition waste, household wastes, appliances, scrap automobiles, and 75 scrap tires, had been openly dumped on the Site without having a department-issued solid waste disposal facility permit.

E. The placement of regulated solid waste on the Site appeared to create an unauthorized dump ("UAD"), for which Surrey is responsible.

7. On January 14, 2022, the Department issued to Surrey a Notice of Violation ("NOV") by the United States Postal Service ("USPS") Certified Mail, requiring full abatement and closure of the UAD. The USPS online tracking system did not provide conclusive evidence that the NOV had been delivered.

8. On January 27, 2022, the Department sent the NOV via FedEx, and it was delivered on January 29, 2022, according to the FedEx online tracking system.

9. On August 16, 2022, Department personnel conducted a follow-up inspection of the site and observed that the UAD was still present and unabated.

10. On October 27, 2022, Department personnel conducted a second follow-up inspection of the site and discovered a significantly reduced amount of solid waste deposited on the Site. Approximately 300 cubic yards of regulated solid waste materials,

including construction and demolition waste, household waste, appliances, scrap automobiles, and 10 scrap tires, were observed.

11. On April 1, 2024, Department personnel conducted a third follow-up inspection of the Site and observed approximately 50 cubic yards of regulated solid waste materials, including construction and demolition waste, household wastes, appliances, and 20 scrap tires.

12. To date, the Department has not received a written response to the NOV from Surrey.

13. 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 violation, 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 violation 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 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The creation, contribution to, or operation of a UAD is inherently a public nuisance, a threat to public health, and a threat to the environment. The Department is not aware of any irreparable harm to the environment, or any immediate threat to human health or the safety of the public due to the presence of the UAD on the Site.

B. **THE STANDARD OF CARE:** Surrey failed to follow the requirements for the lawful disposal of solid wastes, as well as the Department's directives for the proper abatement and closure of the UAD.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to establish if Surrey has realized a significant economic benefit as a result of the violation cited herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of efforts by Surrey to mitigate any potential adverse effects upon the environment, human health, or public safety that may have been caused as a result of the UAD.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Surrey does not appear to have a documented history of violations of the applicable requirements of ADEM Admin. Code div. 335-13.

F. THE ABILITY TO PAY: The Department has no evidence indicating Surrey's inability to pay the civil penalty assessed herein.

14. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, as well as other factors, and has concluded that a civil penalty is appropriate for the violation cited herein (see Attachment A, which is made a part of the Department's FINDINGS).

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7, and 22-27-11, as amended, it is hereby ORDERED:

A. That, not later than forty-five days of issuance of this Order, Surrey shall pay to the Department a civil penalty in the amount of \$3,000 for the violation cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment acceptable to the Department and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management

P.O. Box 301463
Montgomery, Alabama 36130-1463

All payments shall reference Surrey's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon issuance of this Order and continuing each and every day thereafter, Surrey shall cease and desist from creating, operating, or contributing to any UADs.

C. That, within thirty days of issuance of this Order, Surrey shall submit a site closure plan to the Department in accordance with ADEM Admin. Code r. 335-13-1-.13(2)(b)1. This plan shall include a schedule for site closure completion. Unless otherwise directed by the Department, Surrey shall implement the site closure plan as presented, remove and properly dispose of or recycle all solid waste materials in a permitted landfill unit or at a legitimate recycling facility, and comply with all applicable requirements of Division 335-13 of the ADEM Admin. Code.

D. That, within fifteen days of completion of remediation activities, Surrey shall provide the following information to the Department as proof that all closure actions have been completed:

1. Time period in which the remediation activities took place.
2. Total volume of regulated solid waste removed from the Site.
3. Documentation that all regulated solid waste, including both surface and subsurface waste, was removed from the Site.
4. A copy of receipts documenting that all regulated waste was taken to an approved landfill or registered recycling facility.
5. Photographs of the solid waste disposal area(s) on the Site taken before and after remediation.
6. Documentation that the UAD was properly closed to prevent erosion on the Site, if applicable.

7. Documentation that the Site has been secured to prevent any future illegal dumping, if applicable.

E. 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.

F. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Surrey for the violation cited herein.

G. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Surrey for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2024.

Lance R. LeFleur
Director

Attachment A

James Surrey
15077 Jones Lane
Elberta, Baldwin County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Creation of an Unauthorized Dump	1	\$2,500	\$500	\$0	Total of Three Factors
TOTAL PER FACTOR		\$2,500	\$500	\$0	\$3,000

Adjustments to Amount of Initial Penalty*	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
	\$0

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

Footnotes

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