

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Holmes II Excavation Inc
Munford, Talladega 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. Holmes II Excavation, Inc. (Holmes) owns real property located at 46300 AL Highway 21, Munford, Talladega County, Alabama (the “Site”). The Parcel Number associated with the Site is 06-05-21-0-000-011.001.
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 chap. 335-3-3-.01 sets forth the requirements, limitations and exceptions regarding open burning.

5. ADEM Admin. Code r. 335-3-3-.01(2)(b)4. states that “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.”

6. On July 23, 2025, the Department received a complaint alleging unauthorized open burning at the Site. During a July 29, 2025 site inspection, Department personnel were informed by Holmes personnel that they burn plywood, 2x4s and other scrap material from a nearby oriented strand board (OSB) manufacturer.

7. On August 9, 2025, a Notice of Violation (NOV) was delivered via USPS mail. On August 25, 2025, a written response was received. In the written response, Mr. Holmes admitted to burning scrap lumber and/or pallets.

8. Holmes open burning at the Site did not meet all 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 and the AAPCA.

9. 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: Holmes 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 Holmes 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: Holmes derived some economic benefit by not legally disposing of the waste.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: In the written response, Holmes states personnel have been made aware of and became familiar with the open burning regulation.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is not aware of any previous open burning violations at the Site.

F. THE ABILITY TO PAY: Holmes 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, Holmes shall pay to the Department a civil penalty in the amount of \$4,000.00 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, Holmes 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 Holmes 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 Holmes 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 Holmes for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2025.

Edward F. Poolos, 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 6598 5005 60 with instructions to forward and return receipt, to:

Holmes II Excavation, Inc
Mr. Stacy Holmes
46300 AL Highway 21
Munford, Alabama 36268

DONE this the 25th day of September, 2025.



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

ATTACHMENT A

Holmes II Excavation, Inc.
Munford, Talladega 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	
					Total of Three Factors
TOTAL PER FACTOR		\$2,000	\$1,000	0	\$3,000

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

Economic Benefit (+)	\$1,000
Amount of Initial Penalty	\$3,000
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.