

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

Richard Whitten
2720 Highway 5 UAD
Jasper, Walker County, Alabama

Order No. 25-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. Richard Whitten ("Whitten") owns and resides on the real property located at 2720 Highway 5, Parcel ID Number 64-09-07-36-0-000-002.000, in Jasper, Walker County, Alabama ("the Site"), where an unauthorized dump was discovered.

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 rr. 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. In response to a complaint, Department personnel conducted an investigation, including an inspection at the Site on October 19, 2021, followed by a records review. The following was noted during the investigation:

A. Approximately 65 cubic yards of regulated household waste were openly dumped on the Site.

B. The disposal area at the Site did not meet the technical standards for landfills set out in Chapter 335-13-4, and it had not been permitted as a land disposal facility by the Department as required under Chapter 335-13-5.

C. Walker County property tax records verified that Ray and Betty Nelson were the owners of the Site.

D. An unauthorized dump refers to any collection of solid waste either dumped, caused to be dumped, or placed on any public or private property, without having a permit from the Department, regardless of whether the property is regularly used. Therefore, disposing of regulated solid waste on the Site without a solid waste disposal facility permit issued by the Department constitutes the creation of an unauthorized dump, which violates rules 335-13-1-.13(1) and 335-13-1-.13(2), and for which Whitten is responsible.

7. On November 1, 2021, the Department issued Whitten a Notice of Violation ("NOV") via the United States Postal Service ("USPS") Certified Mail, requiring full abatement and closure of the UAD. According to the USPS online tracking system, the NOV was returned to the Department as unclaimed.

8. On December 8, 2021, the Department resent the NOV via FedEx. According to FedEx's online tracking system, the NOV was delivered and signed for by "R. Whitten."

9. On August 26, 2024, Department personnel conducted a follow-up inspection and discovered approximately 60 cubic yards of household waste deposited on the Site.

10. To date, the Department has not received a response to the November 1, 2021 NOV from Whitten.

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 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 as a result of the UAD's presence on the Site.

B. THE STANDARD OF CARE: Whitten failed to abide by requirements applicable to the lawful disposal of solid wastes and failed to comply with directives from the Department regarding 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 Whitten 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 Whitten 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, Whitten 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 Whitten's inability to pay the civil penalty assessed herein.

12. 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, Whitten shall pay to the Department a civil penalty 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 Whitten'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, Whitten shall cease and desist from creating, operating, or contributing to any UADs.

C. That, within thirty days of issuance of this Order, Whitten shall submit a site closure plan to the Department in accordance with ADEM Admin. Code r. 335-13-1-.13(2)(b)1. The site closure plan shall outline how the UAD will be remediated and closed, including a timeline for completing all remediation and closure activities. Unless directed otherwise by the Department, Whitten shall implement the site closure plan as outlined. This includes removing and properly disposing or recycling all solid waste materials at a permitted landfill or registered recycling facility. Whitten must also comply with all applicable requirements of Division 13 of the ADEM Administrative Code.

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

1. 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 a 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 Whitten 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 Whitten for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2024.

Edward F. Poolos

Director

Attachment A

Richard Whitten

2720 Highway 5

Jasper, Walker 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.