

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )
Terrell and Mary Thomas ) PROPOSED
Verbena, Chilton County, Alabama ) ADMINISTRATIVE
ORDER NO: 26-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. Terrell and Mary Thomas (Thomas) own real property located at 3085 County Road 59, Verbena, Chilton County, Alabama (the “Site”). The Parcel Number associated with the Site is 22-04-17-0-000-007.000.

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 chap. 335-3-3 sets forth the requirements, limitations and exceptions regarding open burning.

5. 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)];
- 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)];
- c. The fire shall be attended at all times [335-3-3-.01(2)(b)(7)].

6. On March 23, 2023, the Department received a complaint referencing unauthorized open burning at the Site. During the April 21, 2023 site inspection, Department personnel observed evidence of burning construction/demolition waste. There was also evidence of prior burning on the property.

7. The Department received a second complaint on November 24, 2023 of unauthorized open burning at the site. During a December 15, 2023 site inspection, Department personnel observed evidence of burning construction/demolition waste and household waste.

8. On March 20, 2024, a Notice of Violation (NOV) was issued to Thomas for unauthorized open burning.

9. After multiple attempts to have the NOV delivered by mail, it was hand delivered by Department personnel on June 25, 2024, during an unauthorized open burning complaint investigation of the site. The Department received a response on June 25, 2024, from the residents stating that all burning would cease.

10. The Department received complaints for unauthorized open burning at the site on October 24, 2024, and January 3, 2026. During site inspections, on October 30, 2024 and January 13, 2026, Department personnel observed evidence of unauthorized open burning that included household waste along with construction/demolition waste. All unauthorized open burning was conducted within 500 feet of the nearest occupied dwelling.

11. Thomas conducted unauthorized open burning at the Site, in violation of ADEM Admin. Code r. 335-3-3-.01 and the AAPCA.

12. 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:** Thomas conducted unauthorized open burning of household waste and construction/demolition waste within 500 ft of occupied dwellings. The Department considers these violations to be serious.

B. **THE STANDARD OF CARE:** There appeared to be no care taken by Thomas to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-

3-.01 and the AAPCA. Thomas continued to conduct unauthorized open burning after receiving a NOV.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that Thomas likely derived economic benefit by not properly disposing of the household waste and construction/demolition waste.

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

E. HISTORY OF PREVIOUS VIOLATIONS: The Department verified that unauthorized open burning occurred at the site by conducting five complaint investigations from April 21, 2023 through June 25, 2025.

F. THE ABILITY TO PAY: Thomas 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, Thomas shall pay to the Department a civil penalty in the amount of \$2,500.00 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, Thomas 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 Thomas 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 Thomas 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 Overby

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

ORDERED and ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, 2026

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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 **9589 0710 5270 3494 4618 35** with instructions to forward and return receipt, to:

Terrell and Mary Thomas  
3085 County Road 59  
Verbena, Alabama 36091

DONE this the 26<sup>m</sup> day of MARCH, 2026.



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

## ATTACHMENT A

**Terrell and Mary Thomas  
Verbena, Chilton County, AL**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	1	\$1,000	\$500	\$750	
					<b>Total of Three Factors</b>
<b><i>TOTAL PER FACTOR</i></b>		<b><i>\$1,000</i></b>	<b><i>\$500</i></b>	<b><i>\$750</i></b>	<b><i>\$2,250</i></b>

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

Economic Benefit (+)	\$250
Amount of Initial Penalty	\$2,250
Total Adjustments (+/-)	\$0
<b>FINAL PENALTY</b>	<b>\$2,500.00</b>

Footnotes

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