

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
Kinetic Capital XII) PROPOSED
Axis, Mobile County, Alabama) 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. Kinetic Capital XII (Kinetic) owns real property located off Bentley Road N, Axis, Mobile, Alabama (the “Site”). The Parcel Number associated with the Site is 02-19-01-12-1-000-011.000.
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 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)];
- b. 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 [335-3-3-.01(2)(b)(4)];
- c. The fire shall be attended at all times [335-3-3-.01(2)(b)(7)].

6. On February 13, 2025, the Department received a complaint from the Creola Volunteer Fire Department (CVFD) referencing unauthorized open burning at the Site. During the February 19, 2025 site inspection, Department personnel observed multiple piles of unburned vegetation and a pile of burned vegetation that included regulated waste.

7. On April 23, 2025, the Department received a complaint from the Creola Volunteer Fire Department referencing unauthorized open burning at the Site. During the April 29, 2025 site inspection, Department personnel observed six smoldering piles of vegetation and regulated waste. No one was onsite attending to the fires. The burning was also within 500 feet of the nearest occupied dwelling.

7. On May 12, 2025, a Notice of Violation (NOV) was issued for unauthorized open burning. No response was received; therefore, a second letter was mailed on July 14,

2025. Kinetic emailed Department personnel a response to the NOV on July 30, 2025. Kinetic alleged they did not import vegetation or burn regulated waste.

8. Kinetic conducted unauthorized open burning at the Site, in 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: Kinetic conducted unauthorized open burning of vegetation and regulated waste. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be little care taken by Kinetic to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01 and the AAPCA. According to the CVFD, Kinetic reignited the fire after CVFD extinguished the fire and informed Kinetic to cease burning.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that Kinetic likely derived economic benefit by not properly disposing of the imported vegetation and regulated waste.

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

E. HISTORY OF PREVIOUS VIOLATIONS: There were no documented previous violations for unauthorized open burning.

F. THE ABILITY TO PAY: Kinetic 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, Kinetic shall pay to the Department a civil penalty in the amount of \$9,000.00 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, Kinetic 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 Kinetic 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 Kinetic 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 Kinetic for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, 2026

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 **xxx xxxx** with instructions to forward and return receipt, to:

Kinetic Capital XII
PO Box 1724
Fairhope, Alabama 36533

DONE this the _____ day of _____, 2026.

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

ATTACHMENT A

Kinetic Capital XII Axis, Mobile County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	2	\$5,000	\$2,500	0	
					Total of Three Factors
TOTAL PER FACTOR		\$5,000	\$2,500	0	\$7,500

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

Economic Benefit (+)	\$1,500
Amount of Initial Penalty	\$7,500
Total Adjustments (+/-)	
FINAL PENALTY	\$9,000.00

Footnotes

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