

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)

Edwin Cherry)
Pansey, Houston County, Alabama)

CONSENT ORDER NO. 26-XXX-AP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“Department” or “ADEM”) and Edwin Cherry (Cherry) pursuant to 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*, 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*.

DEPARTMENT’S CONTENTIONS

1. Edwin Cherry owns real property located on 14677 Hwy 84 East, Pansey, Houston County, Alabama (the “Site”). The Parcel Number associated with the Site is 14-03-07-0-000-032.010.
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. 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)];
- d. The fire shall be attended at all times [335-3-3-.01(2)(b)(7)].

6. On April 10, 2026, the Department received a complaint referencing unauthorized open burning at the Site. During an April 15, 2026, site inspection, Department personnel observed a smoldering burn pile containing regulated materials including scrap tires. Department personnel made contact with site personnel and discussed open burning regulations.

7. On April 20, 2026, a Notice of Violation (NOV) was issued to Cherry for unauthorized open burning.

8. The NOV was delivered by the United States Postal Service on April 24, 2026.

9. The Department received a response from Cherry on May 14, 2026. Cherry stated the burning was a means of disposal and property clearing. He also stated that all unauthorized burning would cease.

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

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 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: Cherry conducted unauthorized open burning of regulated waste and tires. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Cherry 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: The Department has determined that Cherry likely derived economic benefit by not properly disposing of the regulated waste and tires.

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

E. HISTORY OF PREVIOUS VIOLATIONS: Cherry has no known prior history with the Department of unauthorized open burning.

F. THE ABILITY TO PAY: Cherry 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)

CHERRY'S CONTENTIONS

12. Cherry neither admits nor denies the Department's contentions. Cherry consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, Cherry, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18), as amended, as well as the need for timely and effective enforcement,; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Cherry agree to enter into this Consent Order with the following terms and conditions:

A. That, not later than forty-five days after the issuance of this Order, Cherry shall pay to the Department a civil penalty in the amount of \$7,250.00 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, Cherry 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 Cherry of obligations to comply in the future with any permit or other written direction from the Department.

E. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

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

G. For purposes of this Consent Order only, Cherry agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Cherry also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Cherry shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Cherry, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Cherry) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal

precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Cherry, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and Cherry agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Cherry shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and Cherry agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Cherry does hereby waive any hearing on the terms and conditions of same.

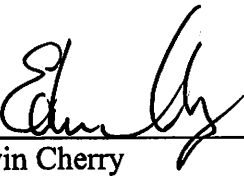
J. The Department and Cherry agree that this Order shall not affect Cherry's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and Cherry agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and Cherry agree that any modifications of this Order must be agreed to in writing signed by both parties.

Executed in duplicate, with each part being an original.

EDWIN CHERRY



Edwin Cherry

ALABAMA DEPARTMENT OF
ENVIRONMENTAL
MANAGEMENT

Edward F. Poolos
Director

Date Signed: 7/10/20

Date Executed: _____

ATTACHMENT A

Edwin Cherry
Pansey, Houston County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	1	\$4,500	\$2,250		
					Total of Three Factors
<i>TOTAL PER FACTOR</i>		<i>\$4,500</i>	<i>\$2,250</i>		<i>\$6,750</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-\$2,000
Total Adjustments (+/-) <i>Enter at Right</i>	-\$2,000

Economic Benefit (+)	\$2,500
Amount of Initial Penalty	\$6,750
Total Adjustments (+/-)	-\$2,000
FINAL PENALTY	\$7,250.00

Footnotes

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