ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: The City of Selma Selma, Dallas County, Alabama	)))))	CONSENT ORDER NO:

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("Department" or "ADEM") and City of Selma ("Selma") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-17, *as amended*, and the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 through 22-28-23, *as amended*, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The City of Selma (Selma) owns real property located on County Road 83 in Selma, Dallas County, Alabama (Parcel Identification Number 27 13 03 06 0 000 030.001).

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 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)].

DEPARTMENT'S CONTENTIONS

6. On March 27, 2026, Department personnel received a complaint of unauthorized open burning of imported vegetation in a borrow pit owned by Selma. During an April 1, 2026, inspection, Department personnel observed active burning of imported green waste along with boxes of paper records. The burning was within 500 feet of the nearest occupied dwelling.

7. On April 10, 2026, a Notice of Violation (NOV) was issued to Selma for unauthorized open burning. The NOV was delivered by the United States Postal Service

on April 17, 2026. The Department received a response to the NOV from Selma on June 4, 2026. In its response, Selma admitted to burning imported vegetation and boxes of paper records.

8. The open burning of imported vegetation along with boxes of paper records observed on the Site did not meet 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(1).

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: Selma conducted unauthorized open burning of imported vegetation and regulated waste. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Selma 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 Selma likely derived economic benefit by not properly disposing of the imported vegetative waste.

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

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

F. THE ABILITY TO PAY: Selma 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).

10. The Department neither admits nor denies Selma's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CITY OF SELMA'S CONTENTIONS

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

ORDER

THEREFORE, Selma, along with the Department, desires to resolve and settle the compliance issues 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)c., *as amended*, as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Selma agree to enter into this ORDER with the following terms and conditions:

A. Selma agrees to pay to the Department a civil penalty in the amount of $4,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Selma agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. That, immediately upon receipt of this Order and continuing thereafter, Selma shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-3-.01 and the AAPCA.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

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

F. Selma agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, Selma 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. Selma also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Selma 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 Selma, 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 Selma) 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 Selma, 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 Selma 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 Selma 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 Selma 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 Selma does hereby waive any hearing on the terms and conditions of same.

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

K. The Department and Selma 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 Selma agree 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.

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

N. The Department and Selma agree that, 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 Selma of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CITY OF SELMA

By: _____
Johnny Moss, III, Mayor

Date Signed: 10/06/26

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

_____
Edward F. Poolos
Director

Date Executed: _____

ATTACHMENT A

City of Selma
Selma, Dallas County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	1	$3,000	$1,500	-	
					Total of Three Factors
TOTAL PER FACTOR		***$3,000***	***$1,500***	-	***$4,500***

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	**$1.000**
Total Adjustments (+/-) ***Enter at Right***	$0

Economic Benefit (+)	$500
Amount of Initial Penalty	$4,500
Total Adjustments (+/-)	$1,000
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.*