

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

MR. O.W. WESTER
ROUT 2, BOX 159
VERBENA, AL 36091

ORDER NO. 97-170-SW

FINDINGS OF FACT

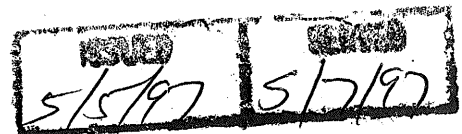
Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 to 22-22A-16, as amended, and the Solid Waste Disposal Act, Code of Alabama 1975, §§ 22-27-1 to 22-27-7, as amended, the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") makes the following FINDINGS OF FACT:

1. Section 22-27-2(6), Code of Alabama 1975 defines an "unauthorized dump" as, among other things, "any solid waste disposal site which does not meet the regulatory provisions of this article."

2. On October 31, 1996 and January 28, 1997 personnel from the Department observed that whole tires, plastic pails, buckets, bottles, abandoned appliances, drums, cardboard, corrugated roofing, auto parts, furniture and other miscellaneous solid waste had been disposed of on property owned and operated by Mr. O.W. Wester. This site located at Route 2 Box 159 in Verbena, Alabama in Coosa County.

3. Code of Alabama § 22-27-5(c), as amended, requires all solid waste disposal sites to have a permit from the Department. To date, Mr. O.W. Wester still has not applied for nor obtained a permit for the disposal site or properly closed said site in accordance with applicable regulations.

4. Code of Alabama § 22-27-4(b), declares unauthorized dumps to be public nuisance per se, a menace to public health, and a violation of the article.



5. Mr. O.W. Wester operates or has operated or allows the operation of an unpermitted solid waste disposal site on the property located on Route 2 Box 159 in Verbena, Alabama in Coosa County in violation of ADEM Admin. Code R. 335-13-5-.01.

6. The assessment of civil penalties for violations of the Department's Rules and Regulations, and for violations of any order, permit conditions, license, certification, or variance issued by the Department is authorized by Code of Alabama § 22-22A-5(18), , as amended. The statute also authorizes that the penalty amount may range from \$100.00 to \$25,000.00 for each violation, so long as the penalty amount does not exceed \$250,000.00 in any given order. Each day a violation continues constitutes a separate violation. In addition to the foregoing "Findings of Fact", the Department has considered the factors detailed in the aforementioned statute in determining the appropriate penalty amount in this particular instance. Those factors are listed as follows:

- (a) The seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public;
- (b) The standard of care manifested by Mr. O.W. Wester;
- (c) The economic benefit which delayed compliance may confer upon Mr. O.W. Wester;
- (d) The nature, extent and degree of success of Mr. O.W. Wester's efforts to minimize or mitigate the effects of such violation upon the environment;
- (e) Mr. O.W. Wester's history of previous violations;
- (f) Mr. O.W. Wester's ability to pay the assessed penalty.

ORDER

Based on the foregoing FINDINGS OF FACT and pursuant to §§ 22-22A-1 to 22-22A-16, and 22-27-1 to 22-27-7 Code of Alabama 1975, as amended, it is hereby ORDERED:

A. That within thirty (30) days from the receipt of notice of this Order, Mr. O.W. Wester will pay to the Department a civil penalty in the amount of One Thousand Dollars (\$1000.00).

B. That Mr. O.W. Wester will upon receipt of notice of this Order immediately and continuing thereafter cease and desist from the unpermitted disposal of solid wastes.

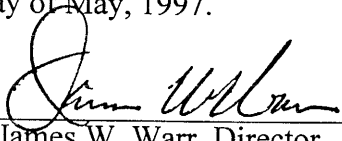
C. That within 30 days from the receipt of notice of this Order, and pursuant to the requirements of ADEM Admin. Code R. 335-13-1-.13, Mr. O.W. Wester will submit for the Department's review a plan for closure of the above unpermitted solid waste disposal site.

D. That within 30 days from the completion of the Department's review and acceptance of the plan referenced in paragraph C., above, Mr. O.W. Wester will complete implementation of the accepted plan for closure of the above-referenced site.

E. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Mr. O.W. Wester for the violations cited herein.

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

ORDERED and ISSUED this 5th day of May, 1997.


James W. Warr, Director
Alabama Department of
Environmental Management
1751 Cong. W. L. Dickinson Drive
Montgomery, Alabama 36109-2608
(205) 271-7700

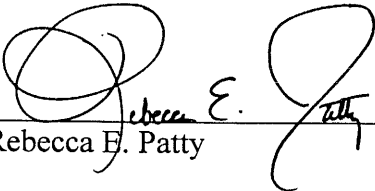
CERTIFICATE OF SERVICE

I, Rebecca E. Patty, hereby certify that I have served Administrative Order No. 97-170-SW upon Mr. O.W. Wester by sending the same, postage paid, through the United States Mail, as Certified Mail, with instructions to forward and return receipt requested to:

CERTIFIED MAIL NO. P 591 992 233

Mr. O.W. Wester
Route 2, Box 159
Verbena, Alabama 36091

DONE this 5 day of May, 1997.


Rebecca E. Patty