

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF
MR. COLEMAN OSBORNE
P. O. BOX 34
CHILDERSBURG, AL

ORDER NO. 95-065-AP/SW

FINDINGS OF FACT

Pursuant to the provisions of the Alabama Environmental Management Act, §22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended, the Alabama Air Pollution Control Act, §22-28-1 through 22-28-23, Code of Alabama 1975, as amended, the Solid Waste Disposal Act, Code of Alabama 1975, §22-27-1 through 22-27-7, as amended and the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the parties hereto, the Alabama Department of Environmental Management (hereinafter, "the Department") makes the following FINDINGS OF FACT:

1. Mr. COLEMAN OSBORNE (hereinafter "the Operator"), an Alabama resident, is the owner and/or operator of an "unauthorized solid waste dump", located at the northeast corner of Highways 280 and 235, in Childersburg, Talladega County, Alabama, operating without the authority of ADEM.

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| ISSUED 4/25/95 | SERVED 5/1/95 |
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2. The Department is a duly constituted agency of the State of Alabama pursuant to §22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended.

3. Pursuant to §22-22A(n), Code of Alabama 1975, 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 through 7671q, as amended. In addition the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act §22-28-1 through 22-28-23, Code of Alabama 1975, as amended.

4. Pursuant to ADEM Administrative Code R. 335-3-3-.01, no person shall cause or permit any open fire, unless such burning is specifically exempted or expressly approved by the Department.

5. On November 2, 1994, during an inspection of the subject site, Department personnel observed a pile of cardboard boxes, cans, and old produce bags where open burning had occurred, without Department approval, in violation of ADEM Administrative Code R. 335-3-3-.01(9).

6. On December 8, 1994, the Department issued a Notice of Violation (NOV) to Osborne for the open burning observed during the November 2, 1994 inspection.

7. No response to the NOV was received from the Operator.

8. 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".

9. On January 31, 1985 personnel from the Department observed that brush, rubbish, shingles, and other miscellaneous regulated solid waste had been disposed of at a site located near the intersection of Alabama Highway 280 and 235 in Childersburg, Alabama owned and operated by the Operator. Notification of this unpermitted activity was sent to the Operator on February 13, 1985 by certified mail.

10. On January 14, 1988 a letter was sent to the Operator by certified mail informing him of continuing violations at this site. On February 29, 1988 personnel from the Department observed that, although some waste had been covered, additional waste had been brought in. A notification of this continuing illegal activity was sent to the Operator which required complete removal of all waste disposed of on the site and disposal at an approved sanitary landfill, to erect a fence to control access, and to post a "No Dumping" sign. As of the date of this order, this has not been done.

11. On December 7, 1988 a Notice of Violation was sent to the Operator informing him of the continuing violations at this site. On January 5, 1989 personnel from the Department observed that no corrective action to properly abate this site had been taken and that additional waste had been disposed of on this site.

12. On January 22, 1991 personnel from the Department observed piles of railroad crossties, spools, plastics, ductwork material, and pallets had been disposed of on this site. Also, evidence that wastes had been burned was observed. The Operator was sent a letter by certified mail on February 4, 1991 requesting that a plan with a time schedule for management of salvageable and/or recyclable material be submitted to the Department. As of the date of this order, this has not been done.

13. On November 14, 1991 personnel from the Department observed that shingles, railroad crossties, household trash, produce, fruits and vegetables, asphalt, pallets, wood wastes, plastic spools, fiberglass panels, and pipes had been disposed of on this site. A Warning Letter was sent to the Operator on December 17, 1991 requesting a plan of abatement for this site. On March 11, 1992 a second Warning Letter was sent for failure to submit the abatement plan. As of the date of this order, the Department has not received the plan for abatement of this site.

14. On May 5, 1992 personnel from the Department observed that additional waste had been placed on the site including fiberglass pipes and sheets, aluminum sheets, shingles, sheetrock, asphalt, tree limbs, construction/demolition debris, copper wire, spindles, railroad crossties, empty drums, iron pipes, tar roofing, foam rubber, sheet metal and car parts. There was also

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evidence of recent burning at the site. A Notice of Violation was sent to the Operator on June 9, 1992 requiring the Operator to schedule a meeting to discuss abatement of the site. As of the date of this order, the Operator has not complied with this requirement.

15. On November 4, 1994 personnel from the Department observed that asphalt, tires, shingles, carpeting, sheetrock, wood, wood boxes, demolition debris, paper, abandoned vehicles, a trailer house, cardboard boxes, cans, and produce had been disposed of on the site. There was evidence of recent burning. A Notice of Violation was issued to the Operator on November 15, 1994. As of the date of this order, the Operator has not responded to this Notice.

16. Section 22-27-5(c), Code of Alabama 1975 requires all solid waste disposal sites to have a permit from the Department. To date, the Operator has not applied for nor obtained a permit for the disposal site or properly closed said site in accordance with applicable regulations.

17. Section 22-27-4(b), Code of Alabama 1975 declares unauthorized dumps to be a public nuisance per se, a menace to public health, and a violation of the article.

18. The Operator owns and operates, or has operated, an unpermitted solid waste disposal site located at the northeast corner of Alabama Highways 280 and 235 in

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Childersburg, Alabama, in violation of ADEM Administrative Code R. 335-13-5-.01.

19. 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 &22-22A-5(18), Code of Alabama 1975, 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 the operator;

(c) The economic benefit which delayed compliance may confer upon Coleman Osborne;

(d) The nature, extent and degree of success of Coleman Osborne's efforts to minimize or mitigate the effects of such violation upon the environment;

(e) Coleman Osborne's history of previous violations;

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(f) Coleman Osborne's ability to pay the assessed penalty.

ORDER

Based upon the foregoing FINDINGS OF FACT and pursuant to §22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-28-10(2) and 22-28-18, Code of Alabama 1975, as amended, and with the consent of each party, it is hereby ORDERED:

A. That within 30 days from the date of receipt of notice of this Order, the Operator will pay to the Department a civil penalty in the amount of Five Hundred Dollars (\$500.00).

B. That the Operator will upon receipt of notice of this Order, immediately and continuing thereafter cease and desist from open burning and the unpermitted disposal of solid waste.

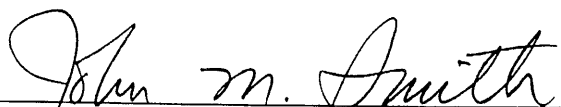
C. That within 30 days of the date of receipt of notice of this Order, pursuant to the requirements of ADEM Administrative Code R. 335-13-1-.13, the Operator will submit for the Department's review a plan for closure of the above unpermitted solid waste disposal site.

D. That within 30 days from the completion of the Department's review and acceptance of the plan referenced in paragraph C. above, the Operator 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 the Operator 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 the Operator for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 25th day of April, 1995.

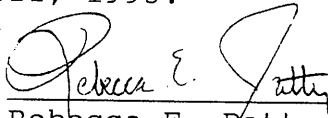

John M. Smith, Director
Alabama Department of
Environmental Management
1751 Cong. W. L. Dickenson Dr.
Montgomery, Alabama 36130
(334) 271-7700

CERTIFICATE OF SERVICE

I, Rebecca E. Patty, hereby certify that I have served the foregoing proposed Administrative Order No. 95-065-AP/SW upon Coleman Osborne by sending the same, postage paid, through the United States Mail, as Certified Mail No. Z 073 536 148 with instructions to forward and return receipt requested to:

Coleman Osborne
P. O. Box 34
Childersburg, Alabama 35044

DONE this 25th day of April, 1995.



Rebecca E. Patty