

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )  
 )  
Randall D Defoe )  
19555 County Road 55 )  
Silverhill, Baldwin County, Alabama )

\*\*\*\*Proposed\*\*\*\*  
ADMINISTRATIVE  
ORDER NO: 16-\_\_\_\_\_ AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), the Alabama Department of Environmental Management (hereinafter, the “Department” or “ADEM”) Administrative Code of Regulations (hereinafter, “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. Randall Defoe (hereinafter, “Defoe”) operates a junkyard at his residence located in Silverhill, Baldwin County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), 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, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-3-.01(2)(b)1 states that “....open burning must take place on the property on which the combustible fuel originates.”

5. ADEM Admin. Code r. 335-3-3-.01(2)(b)4 states that “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.”

6. ADEM Admin. Code r. 335-3-3-.01(2)(d) states that “Permission to open burn under the provision of this paragraph is revoked during the months of May, June, July, August, September, and October in Baldwin, DeKalb, Etowah, Jefferson, Lawrence, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, and Talladega Counties.

7. On May 29, 2015, Department personnel followed-up on an open burning complaint by inspecting Defoe’s property. Afterwards, a copy of the ADEM open burning regulations were left at Defoe’s residence.

8. On May 10, 2016, the Department conducted a second inspection of Defoe’s property and noted three burn piles that included, but was not limited to, remnants of metals, plastics and refuse in violation of ADEM Admin. Code rs. 335-3-3-.01(2)(b)1, 335-3-3-.01(2)(b)4, and 335-3-3-.01(2)(d).

9. During a follow-up inspection of Defoe’s property on June 6, 2016, the Department observed open burning of materials that included, but not limited to, metals, plastics and refuse in violation of ADEM Admin. Code rs. 335-3-3-.01(2)(b)1, 335-3-3-.01(2)(b)4, and 335-3-3-.01(2)(d).

10. 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 violation, 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 violation 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: Defoe has continued to conduct illegal open burning on his property and doing so during the burn ban. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Defoe to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01(2)(b)1, ADEM Admin. Code r. 335-3-3-.01(2)(b)4, and ADEM Admin. Code r. 335-3-3-.01(2)(d).

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Defoe likely derived economic benefit by not disposing of debris and garbage in accordance with the ADEM Admin. Code R.

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

E. HISTORY OF PREVIOUS VIOLATIONS: Defoe has previous history of violating the State of Alabama Open Burning Regulations. Defoe conducted illegal open burning during the burn ban in May of 2015.

F. THE ABILITY TO PAY: Defoe 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 (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Defoe shall pay to the Department a civil penalty in the amount of \$7,500.00 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, Defoe shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-

3-.01(2)(b)1, ADEM Admin. Code r. 335-3-3-.01(2)(b)4, and ADEM Admin. Code r. 335-3-3-.01(2)(d).

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 Defoe of his 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 Defoe 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 Defoe for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_ day of \_\_\_\_\_, 2016.

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Lance R. LeFleur, Director  
Alabama Department of Environmental  
Management  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2059  
(334) 271-7700

PROPOSED ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Ronald W. Gore, 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 **91 7108 2133 3936 7151 0415** with instructions to forward and return receipt, to:

Randall D. Defoe  
19555 County Road 55  
Silverhill, AL 36576

DONE this the 5th day of July, 2016.



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Ronald W. Gore  
Chief - Air Division  
Alabama Department of  
Environmental Management

## ATTACHMENT A

**Randall D Defoe**  
**19555 County Road 55**  
**Silverhill, Baldwin County, Alabama**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Illegal open burning	2	\$2,000	\$1,000	\$500	
Burning during the burn ban	2	\$1,000	\$1,000	\$500	
					Total of Three Factors
<b>TOTAL PER FACTOR</b>		<b>\$3,000</b>	<b>\$2,000</b>	<b>\$1,000</b>	<b>\$6,000</b>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	\$0

Economic Benefit (+)	\$1,500
Amount of Initial Penalty	\$7,500
Total Adjustments (+/-)	\$0
<b>FINAL PENALTY</b>	<b>\$7,500.00</b>

Footnotes

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