

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:	)	
Bobby Holmes	)	CONSENT ORDER NO. 16-____-CAP
Sylacauga, Talladega County, Alabama	)	
	)	

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and Bobby Holmes (hereinafter, “Holmes”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§22-22A-1 through 22-22A-16, (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. Holmes owns/manages Holmestead Mobile Home Park, located in Sylacauga, Talladega County, Alabama (hereinafter, the “Park”).
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.”

#### ***DEPARTMENT’S CONTENTIONS***

6. On January 7, 2016, a complaint was received by the Department concerning open burning of household garbage being conducted at two residences located at the Park.

7. On January 20, 2016, Department personnel verified that open burning of household waste was being conducted at the two residences located at the Park.

8. On February 8, 2016, the Department mailed Holmes a letter notifying him that “the open burning of household garbage and other refuse is a violation of ADEM Admin. Code R. 335-3-3-.01” and advising him “to cease all illegal open burning” being conducted at the Park.

9. On February 17, 2016, a complaint was received by the Department concerning Holmes open burning prohibited materials, consisting of tires, box springs, furniture and large amounts of various items.

10. On February 23, 2016, Holmes responded to the Department’s February 8, 2016 letter explaining that he informed his tenants to, cease the prohibited open burning, clean up the burn piles, and apply for garbage service or risk eviction.

11. On March 3, 2016, the Department initiated an investigation of the February 17, 2016 open burning complaint and determined that prohibited debris, including tires, box springs, and furniture had been recently open burned at the Park.

12. Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), 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 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:** The Department considers the alleged violations to be serious, although it is not aware of any evidence of irreparable harm to human health or the environment due to these violations.

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

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Holmes likely derived economic benefit by not legally disposing of the debris and garbage.

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

E. HISTORY OF PREVIOUS VIOLATIONS: Holmes has no previous history of violating the State of Alabama Open Burning Regulations.

F. THE ABILITY TO PAY: Holmes has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty to resolve this matter amicably without incurring the unwarranted expense of litigation.

14. 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, based upon the foregoing and attached contentions, has concluded that the civil penalty is appropriate (*See* “Attachment A”, which made a part of Department’s Contentions).

15. The Department neither admits nor denies Holmes’ 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 unwarranted expenditure of State resources in 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.

***HOLMES' CONTENTIONS***

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

***ORDER***

THEREFORE, Holmes, 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 has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Holmes agree to enter into this Consent Order with the following terms and conditions:

A. Holmes agrees to pay to the Department a civil penalty in the amount of \$1,000.00 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. Holmes 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. Holmes agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code r. 335-3-3-.01(2)(b)1 and ADEM Admin. Code r. 335-3-3-.01(2)(b)4 immediately upon the effective date of this Consent Order and every day thereafter.

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. The parties agree 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 alleged violations and/or deviations which are cited in this Consent Order.

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

G. For purposes of this Consent Order only, Holmes 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. Holmes also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Holmes 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 Holmes, including his 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 Holmes) and which delays or prevents performance by a date

required by the Consent Order. Events such as unanticipated or increase 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 Holmes, 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 Holmes 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 reference herein. Should additional facts and circumstances be discovered in the future concerning illegal open burning 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 Holmes 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 addresses new matters not raised in this Consent Order.

I. The Department and Holmes 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 Holmes does hereby waive any hearing on the terms and conditions of the same.

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

K. The Department and Holmes 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.

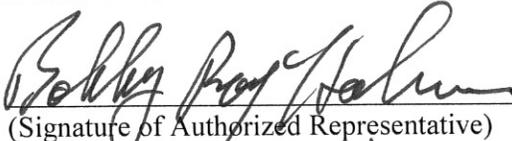
L. The Department and Holmes agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

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

N. The Department and Holmes 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 Holmes of his obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

BOBBY HOLMES

  
\_\_\_\_\_  
(Signature of Authorized Representative)

  
\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Title)

  
\_\_\_\_\_  
(Date)

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
Lance R. LeFleur  
Director

\_\_\_\_\_  
(Date Executed)

# ATTACHMENT A

**Bobby Holmes**  
**Sylacauga, Talladega County, Alabama**

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Burning of garbage and construction debris	1	\$1,000	\$500	0
<b>Totals</b>		<b>\$1,000</b>	<b>\$500</b>	<b>0</b>

**Economic Benefit**                      \$500

**Mitigating Factors**

**Ability to Pay**

**Other Factors**                      -\$1,000

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**Civil Penalty**                      **\$1,000.00**

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