

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )  
 )  
Eddie Lee Scott Jr. )  
Stevenson, Jackson County, Alabama )

PROPOSED  
ADMINISTRATIVE  
ORDER NO: 22-XXX-AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-17, as amended, the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, as amended, 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. Eddie Lee Scott Jr. (hereinafter, “Scott”) owns real property located at 3807 County Road 45 in Stevenson, Jackson County, Alabama (hereinafter, “Site”).
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 . 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, as amended.

4. ADEM Admin. Code r. 335-3-3-.01(1)(e) states “No person shall ignite,...or maintain any open fire except as follows: Fires for training personnel in the methods of fighting fires, provided that all requirements of ADEM Admin. Code r. 335-3-11-.02(12) are met.

5. 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.”

6. 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.”

7. On February 27, 2022, the Department received a complaint from the local fire department regarding unauthorized open burning of a residential structure occurring at the Site.

8. On March 11, 2022, the Department issued a Warning Letter (WL) to Scott concerning the unauthorized open burning of a residential structure, which requested a written response be submitted to the Department no later than April 11, 2022.

9. In the March 24, 2022 response to the WL, Scott admitted to burning the residential structure.

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 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: Scott conducted unauthorized open burning of a residential structure. The Department considers this violation to be serious.

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

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Scott likely derived an economic benefit by not legally disposing of the residential structure.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: At the time of the violation, there were no efforts by Scott to mitigate possible effects of this violation upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Scott has no previous history with the Department for violation the Open Burning regulations.

F. THE ABILITY TO PAY: Scott 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, *as amended*, it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Scott shall pay to the Department a civil penalty in the amount of \$1,000.00 for the violation 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, Scott shall ensure immediate and future compliance with ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)4.

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 Scott 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 Scott for the violation 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 Scott for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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

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 **9489 0090 0027 6294 9245 30** with instructions to forward and return receipt, to:

Eddie Lee Scott Jr.  
104 Patterson Road  
Stevenson, Alabama 35772

DONE this the 19<sup>th</sup> day of April, 2022.



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

## ATTACHMENT A

**Eddie Lee Scott Jr.  
Stevenson, Jackson County, Alabama**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	1	\$1,000	\$500	\$0	
					<b>Total of Three Factors</b>
<b><i>TOTAL PER FACTOR</i></b>		<b><i>\$1,000</i></b>	<b><i>\$500</i></b>	<b><i>\$0</i></b>	<b><i>\$1,500</i></b>

<b>Adjustments to Amount of Initial Penalty</b>	
Mitigating Factors (-)	
Ability to Pay (-)	-\$1,000
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	\$0

<b>Economic Benefit (+)</b>	\$500
<b>Amount of Initial Penalty</b>	\$2,000
<b>Total Adjustments (+/-)</b>	-\$1,000
<b>FINAL PENALTY</b>	\$1,000.00

Footnotes

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