

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

_____))
IN THE MATTER OF:))
))
David Brickhouse))
Blakney Road STS and UAD))
Salem, Lee County, Alabama))
_____)

Order No. 21 -XXX -ST/SW

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended; the Alabama Scrap Tire Environmental Quality Act (hereinafter “ASTEQA”), Ala. Code §§ 22-40A-1 to 22-40A-24, as amended; the Solid Wastes and Recyclable Materials Management Act (hereinafter “SWRMMA”), Ala. Code §§ 22-27-1 to 22-27-18, as amended; and the Alabama Department of Environmental Management’s (hereinafter “ADEM” or “the Department”) Administrative Code of Regulations (hereinafter “ADEM Admin. Code r.”) promulgated pursuant thereto, the Department makes the following FINDINGS:

1. David Brickhouse (hereinafter “Mr. Brickhouse”) is responsible for the creation of a scrap tire site and a unauthorized dump (hereinafter “STS-UAD”) on real property located at 1275 Blakney Road (Parcel No. 43 12 09 32 0 000 001.000, 43 12 09 32 0 000 002.000, and 43 12 09 32 0 000 003.000) in Salem, Lee County, Alabama, which is the subject of this Administrative Order. At the time of inspection Mr. Brickhouse was residing on the property.
2. Pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Department is a duly constituted department of the State of Alabama.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, and Ala. Code § 22-27-9(a), as amended, the Department is the state agency authorized to administer and enforce the provisions of the SWRMMA, Ala. Code §§ 22-27-1 to 22-27-18, as amended.

4. Pursuant to Ala. Code § 22-40A-11, as amended, the Department is the state agency authorized to administer and enforce the provisions of the ASTEQA, Ala. Code §§ 22-40A-1 to 22-40A-24, as amended.

5. Pursuant to Ala. Code § 22-40A-5(a), as amended, and ADEM Admin. Code r. 335-4-2-.01(2), the responsible party for a scrap tire site shall be responsible for the remediation of the site. If the responsible party is not determined, the landowner shall be responsible for remediation of the site.

6. Pursuant to Ala. Code § 22-27-10(b), as amended, and ADEM Admin. Code r. 335-13-11-.03(2), any person who participates in the creation or operation of an unauthorized dump, or contributed to an unauthorized dump, shall be responsible for the removal of the waste or otherwise the closure of the unauthorized dump in accordance with this article and rules of the department. If those who created, operated, or contributed to an unauthorized dump do not remove or close the unauthorized dump, the landowner shall also be responsible for the removal or otherwise the closure of the unauthorized dump.

7. On April 13, 2021, pursuant to a complaint, Department personnel conducted an inspection of the real property located at 1275 Blakney Road in Salem, Lee County, Alabama and observed a STS and a UAD. A review of Lee County property records revealed Lydia K. Meadows as the owner of the property. However, Department personnel have determined that Mr. Brickhouse is the creator and operator of the STS-UAD and was residing on the property at the time of inspection. The inspection and a review of Mr. Brickhouse's compliance with certain requirements of Divisions 4 and 13 of the ADEM Admin. Code revealed the following:

A. Pursuant to ADEM Admin. Code r. 335-4-4-.01(1), no person may accumulate more than 100 scrap tires, except a permitted processor, a person who registers as required in ADEM Admin. Code r. 335-4-3-.01(2), or a permitted SWDF [Solid Waste Disposal Facility]. No person may expose scrap tires to the elements for more than thirty days.

During the April 13, 2021 inspection, Department personnel observed approximately 300 whole scrap tires being accumulated on the aforementioned property. A review of departmental records revealed that neither Mr. Brickhouse nor anyone else associated with the property had registered with the Department as a receiver of scrap tires or obtaining a scrap tire processor or SWDF permit from the Department. The accumulation of the scrap tires on the property without meeting one or more of the aforementioned requirements constitutes the creation of an illegal scrap tire site.

B. Pursuant to ADEM Admin. Code rs. 335-13-1-.13(1)(a) and (2), unauthorized dumps are prohibited and must be closed in a manner determined to be necessary by the Department.

During the April 13, 2021 inspection, Department personnel observed approximately 300 cubic yards of solid waste, including but not limited to scrap metal, construction/demolition waste, scrap automobiles and parts, scrap appliances, and household waste open dumped on the property, thereby constituting the creation of an unauthorized dump.

8. On April 22, 2021, the Department issued a Notice of Violation (hereinafter "NOV"), requiring the abatement and closure of the STS-UAD and the submittal of documentation attesting to the complete remediation of the STS-UAD and the proper disposal of all regulated solid wastes, via Certified Mail to Mr. Brickhouse.

9. On April 30, 2021, the NOV was signed for and delivered to Mr. Brickhouse's residence.

10. The Department has not received a response to the NOV.

11. 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 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. Each day such a 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 has considered the general nature and magnitude of each violation and determined the violations constituted a significant deviation from the requirements applicable to solid waste disposal and scrap tire management. At this time, the Department is unaware of any irreparable harm to the environment; however, the STS-UAD may pose a threat to human health or safety of the public due to the possible presence of disease vectors.

B. THE STANDARD OF CARE: In considering the standard of care manifested by Mr. Brickhouse, the Department noted the violations cited herein were non-technical and easily avoidable. Consequently, Mr. Brickhouse has failed to exhibit a standard of care commensurate with the applicable regulatory standards set forth in ADEM Admin. Code div. 335-4 and 335-13.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Mr. Brickhouse has realized a significant economic benefit as a result of the violations noted.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any attempts by Mr. Brickhouse to mitigate potential effects upon the environment that may have been caused as a result of the STS-UAD.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Mr. Brickhouse does not have a documented history of violations of the applicable requirements of Divisions 335-4 or 335-13 of the ADEM Administrative Code.

F. THE ABILITY TO PAY: The Department does not have any evidence indicating that Mr. Brickhouse is unable to pay the civil penalty.

11. OTHER FACTORS: Pursuant to Ala. Code §22-40A-19(e), as amended, a fine of five dollars (\$5) per tire shall be assessed against any party who accumulates, transfers, transports, processes, or engages in unauthorized disposal of scrap tires. This fee shall be in addition to all other fines or penalties assessed. In consideration of the aforementioned statutory requirement, the Department has enhanced the civil penalty accordingly.

12. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, as well as other factors, and has concluded that a civil penalty is appropriate for the violations cited herein (See Attachment A, which has been made part of the Department's Findings).

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-11, 22-40A-4(a), 22-40A-4(b), and 22-40A-5(a), as amended, it is hereby ORDERED:

A. That, not later than forty-five days of issuance of this Order, Mr. Brickhouse shall pay to the Department a civil penalty in the amount of \$16,500 for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment acceptable to the Department and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

All payments shall reference Mr. Brickhouse's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Mr. Brickhouse shall cease and desist from operating the STS-UAD.

C. That, within thirty days of issuance of this Order, Mr. Brickhouse shall submit a closure plan to the Department in accordance with ADEM Admin. Code r. 335-13-1-.13(2)(b)(1) and ADEM Admin. Code r. 335-4-2-.01(6). This plan shall include a schedule for remediation and closure completion. Mr. Brickhouse shall implement the closure plan and remove all scrap tires and solid waste onsite to an approved landfill unit.

D. That, within thirty days of completion of remediation activities, Mr. Brickhouse shall document closure activities by submitting the following information to the Department:

1. Time period in which the remediation activities occurred.
2. Total volume of tires and solid waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill or recycling facility.
5. Photographs of the property before, during, and after remediation.
6. Documentation that adequate sedimentation controls were employed to prevent erosion from disturbed areas resulting from the remediation activities.
7. Documentation that the property has been secured to prevent any future illegal dumping.

E. 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.

F. That, the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Mr. Brickhouse for the violations cited herein.

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

ORDERED and ISSUED this _____ day of _____, 2021.

Lance R. LeFleur
Director

Attachment A

Mr. David Brickhouse
Blakney Road STS-UAD
Salem, Lee County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Creation of an Unauthorized Dump	1	\$9,000	\$1,000	\$0	
Creation of an illegal Scrap Tire Site	1	\$4,500	\$500	\$0	
TOTAL PER FACTOR		\$13,500	\$1,500	\$0	\$15,000

Adjustments to Amount of Initial Penalty*	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$1,500
	\$1,500

Economic Benefit (+)*	\$0
Amount of Initial Penalty	\$15,000
Total Adjustments (+/-)	\$1,500
FINAL PENALTY	\$16,500

Footnotes

- Additive fine of five dollars (\$5) per tire

* See the "FINDINGS" portion of the Order for a detailed description of each violation and the penalty factors.