

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
Nick Bussie)
Verbena, Chilton County, Alabama) PROPOSED
ADMINISTRATIVE
ORDER NO: 24-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 ("Department" or "ADEM") Administrative Code of Regulations ("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. Nick Bussie (Bussie) operates Bussie Construction on property located on County Road 443 (the "Site"). The Site is located at latitude/longitude (32.71489, - 86.58981), Verbena, Chilton 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-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, as amended. In addition, the Department is authorized to administer and

enforce the provisions of the Alabama Air Pollution Control Act (AAPCA), Ala. Code §§ 22-28-1 to 22-28-23, *as amended*.

4. On April 24, 2023, the Department received a complaint referencing unauthorized open burning at the aforementioned location. Department personnel conducted an inspection on April 27, 2023, and documented that household waste and construction/demolition waste had been burned. Bussie was given a Warning Notice during the inspection and was advised to cease all burning. Bussie admitted to burning cardboard and trash.

5. On August 7, 2023, the Department received a complaint referencing unauthorized open burning at the Site. Department personnel conducted an inspection on August 10, 2023, and documented that household waste and construction/demolition waste had been burned.

6. On September 6, 2023, a Notice of Violation (NOV) was issued to Bussie Construction. The United States Postal Service tracking indicates the NOV was delivered on September 8, 2023. As of this date, a response has not been received.

7. On October 25, 2023, the Department received a complaint referencing unauthorized open burning at the aforementioned location. Department personnel conducted an inspection on November 1, 2023, and documented that household waste and construction/demolition waste had been burned.

8. Bussie conducted unauthorized open burning at the Site, in violation of ADEM Admin. Code r. 335-3-3-.01 and the AAPCA.

9. 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: Bussie continues to conduct unauthorized open burning of regulated materials that included construction/demolition waste after receiving a NOV and being verbally advised by the Department to cease. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Bussie to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01 and the AAPCA.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Bussie derived economic benefit by not legally disposing of regulated materials.

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

E. HISTORY OF PREVIOUS VIOLATIONS: Bussie was warned by Department personnel in April 2023 for violating the Department's open burning regulations. He was advised to cease all burning.

F. THE ABILITY TO PAY: Bussie 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, Bussie shall pay to the Department a civil penalty in the amount of \$10,000.00 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, Bussie shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-3-.01 and the AAPCA.

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

ORDERED and ISSUED this ____ day of _____, 2023.

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

ATTACHMENT A

Nick Bussie
Verbena, Chilton County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	2	\$4,000	\$2,000	\$2,000	
					Total of Three Factors
TOTAL PER FACTOR		<i>\$4,000</i>	<i>\$2,000</i>	<i>\$2,000</i>	<i>\$8,000</i>

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

Economic Benefit (+)	\$2,000
Amount of Initial Penalty	\$10,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$10,000.00

Footnotes

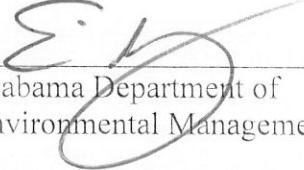
* See the "Department's Findings" portion of the Order for a detailed description of each violation and the penalty factors.

CERTIFICATE OF SERVICE

I, Eric Moyers, do hereby certify that I have served this Administrative Order upon the person(s) listed below.

Nick Bussie
395 County Road 443
Verbena, Alabama 36091

DONE this the 24 day of January, 2024.



Alabama Department of
Environmental Management