

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )
Scott and Cynthia Sellers ) PROPOSED
Cullman, Cullman County, Alabama ) ADMINISTRATIVE
ORDER NO: 23-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. Scott and Cynthia Sellers (the “Sellers”) own real property at 294 County Road 1094 (the “Site”). The Sellers maintain the property as a farm to provide produce for Glover’s Plant and Produce Market. The Site is located at latitude/longitude (34.1993, - 86.9995), Cullman, Cullman County, Alabama. The Parcel Number associated with the Site is 1803060000015002.

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, Ala. Code §§ 22-28-1 to 22-28-23, *as amended*.

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)2. states that "The location of the burning must be at least 500 feet from the nearest occupied dwelling other than a dwelling located on the property of which the burning is conducted."

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 June 30, 2022, the Department received a complaint regarding the unauthorized open burning of imported vegetation and other regulated materials being conducted by the Sellers at the Site.

8. On July 7, 2022, an inspection was performed of the Site by the Department and the following was noted:

8a. A burn pile was located at the back of the Site containing metal, screws, nails, metal fencing, household garbage, scrap wood and vegetation.

8b. During the inspection, a nearby resident informed Department personnel that the burn pile had been used since March.

8c. Information outlining the Department's open burning regulations was mailed to the Sellers that afternoon.

8d. Department personnel followed up with a phone to Scott Sellers that afternoon and both parties discussed the requirements of the open burning regulations.

9. On September 12, 2022, the Department received another complaint regarding the continued unauthorized open burning of imported vegetation and other regulated materials being conducted by the Sellers at the Site.

10. On September 13, 2022, the Department performed an inspection of the Site and noted the following in violation of ADEM Admin. Code rs. 335-3-3-.01(2)(b)1., 335-3-3-.01(2)(b)2., and 335-3-3-.01(2)(b)4.:

10a. A burn pile was located in the same location as the previous inspection that contained metal, lumber, PVC, pallets, mattresses, plastic, household garbage and children's toys.

10b. The Department inspector spoke with Cynthia Seller's father, Mike Glover, who was aware of the burn pile and stated that his son-in-law, Scott Sellers, dumps scrap from construction jobs onto the burn pile.

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 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: The Sellers conducted unauthorized open burning of imported vegetation and other regulated materials on more than one occasion. The Department considers these violations to be serious.

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

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Sellers likely derived an economic benefit by not legally disposing of the imported vegetation and other regulated materials.

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

E. HISTORY OF PREVIOUS VIOLATIONS: The Sellers conducted unauthorized open burning in June of 2022. They spoke with Department personnel by phone in July after receiving a warning sheet from the Department that outlined the open burning regulations. The warning sheet was discussed in detail as well as the potential risk of further action being taken by the Department should the proper remedial actions not be taken by the Sellers on the Site.

F. THE ABILITY TO PAY: The Sellers have 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, the Sellers shall pay to the Department a civil penalty in the amount of \$2,500.00 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, the Sellers shall ensure immediate and future compliance with ADEM Admin. Code rs. 335-3-3-.01(2)(b)1., 335-3-3-.01(2)(b)2., 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 the Sellers 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 the Sellers 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 the Sellers 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) 271-770

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 6202 3581 81 with instructions to forward and return receipt, to:

Scott and Cynthia Sellers  
203 County Road 1094  
Cullman, Alabama 35057

DONE this the 18<sup>th</sup> day of October, 2022.



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

## ATTACHMENT A

**Scott and Cynthia Sellers  
Cullman, Cullman County**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	1	\$2,000	\$1,000	\$1,000	
					<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<b>\$2,000</b>	<b>\$1,000</b>	<b>\$1,000</b>	<b>\$4,000</b>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	\$2,500
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	-\$2,500

Economic Benefit (+)	\$1,000
Amount of Initial Penalty	\$5,000
Total Adjustments (+/-)	-\$2,500
<b>FINAL PENALTY</b>	<b>\$2,500.00</b>

Footnotes

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